



SUPERVISION OF THE USE OF FOREIGN WORKERS (TKA) IN THE FRAMEWORK OF REALIZING TECHNOLOGY TRANSFER AND SKILL TRANSFER FOR INDONESIAN WORKERS (TKI)

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Abstract

The objective of this research is to identify and understand: (1) The regulation of monitoring the use of foreign workers (TKA) to facilitate the transfer of technology and expertise to Indonesian workers (TKI) acting as counterparts; (2) The monitoring of foreign workers' use based on current legislation to achieve the realization of technology and expertise transfer to Indonesian workers/counterparts; (3) The integrated monitoring norms that can facilitate the implementation of technology and expertise transfer to counterpart workers/TKIs. This research is normative legal research. The approaches used are (1) the statutory approach and (2) the conceptual approach. The types and sources of legal materials include primary legal materials, secondary legal materials, and tertiary legal materials. The research findings indicate that: (1) The monitoring of foreign workers' use for the purpose of technology and/or expertise transfer to accompany Indonesian workers has not been comprehensively regulated in accordance with the applicable legal hierarchy, and the norms for the implementation of education and/or training for accompanying Indonesian workers to facilitate technology and expertise transfer have not yet been included in the category of repressive judicial actions. (2) The current monitoring of the use of foreign workers has not yet achieved the realization of technology and expertise transfer to accompany Indonesian workers, as the existing regulations place the responsibility for technology and/or skills transfer entirely on the employing companies, without provisions for collaboration between employers and educational and training institutions. (3) The integrated monitoring norms that can realize the implementation of technology and/or expertise transfer to Indonesian workers acting as counterparts should involve not only Immigration and the Competency Certification Institute but also the Ministry of Education, Culture, Research, and Technology as the regulator to ensure that technology or expertise transfer has occurred according to the minimum competency standards for the positions occupied by foreign workers

Keywords: Labor supervision, technology transfer, expertise transfer.

INTRODUCTION

The development of globalization has driven the flow of capital and investment across the globe, as well as population migration and the movement of labor between countries. ¹This labor movement occurs because investments in other countries generally require direct supervision by the owner/investor. Therefore, the use of foreign labor in the current era of globalization, particularly in the economic sector, has become unavoidable. Foreign labor, especially in investment contexts, is a professional expert specifically brought in by investors to oversee their investments. The need for professional experts with specialized knowledge and technology has led private companies, both foreign and domestic, to employ foreign workers. The goal of employing foreign workers is to meet the need for skilled and professional workers in specific fields that are not yet available to Indonesian workers and to accelerate national development by accelerating the transfer of science and technology (IPTEK) and increasing

¹Haryono, Haryono. "Globalization and Migration of Indonesian Labor (A Descriptive Study of Population Sociology)." *Hermeneutics: Journal of Hermeneutics* 3.2 (2017): 1-13. DOI: <http://dx.doi.org/10.30870/hermeneutika.v3i2.3084>

foreign investment to support national development.² According to data from the Ministry of Manpower (Kemenaker), there were approximately 111,700 foreign workers (TKA) in Indonesia in November 2022. This number has exceeded pre-pandemic levels and is the highest record since 2017. In November 2022, the majority of TKA worked in the service sector (49.08%) and industry (48.30%). A small portion also worked in the agriculture and maritime sectors (2.62%). Nearly half held professional positions (48.43%), followed by consultants (21.30%), managers (20.90%), directors (8.68%), and commissioners (0.69%). The majority of TKA came from China (46.83%) and Japan (10.01%). There were also workers from South Korea, India, the Philippines, Malaysia, the United States, Australia, the United Kingdom, and Singapore, but their percentages were small.³

The use of foreign workers is intended to improve the capabilities and knowledge of Indonesian human resources through technology transfer and expertise transfer in accordance with the competencies possessed by foreign workers so that when the work agreement ends, their position can be replaced by Indonesian workers. Therefore, the existence of foreign workers cannot be avoided, but must still pay attention to the interests of the labor market and national interests. In national development, according to Admin, capital/investment, technology, and foreign skilled workers are needed, because Indonesian workers are not yet able to provide skilled workers, both in quantity and quality. Therefore, if investment requires the use of Foreign Workers (TKA), they must be selective only in employment relationships (*sponsorship*) for certain positions and certain periods and have competencies in accordance with the position to be occupied (Article 42 paragraph 4 of Law No. 13 of 2003 concerning Manpower in conjunction with Law No. 11 of 2020 concerning Job Creation in conjunction with Government Regulation in Lieu of Law No. 2 of 2002 in conjunction with Law No. 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law). In addition, the use of TKA must be directed to accelerate the national development process through technology transfer and expertise transfer from TKA to TKI companion workers as regulated in Article 45 of Law No. 6 of 2023.⁴ To implement the Job Creation Law, particularly regarding the use of foreign workers, Government Regulation (PP) No. 34 of 2021 concerning the Use of Foreign Workers has been established. Article 32 states that "Foreign Worker Employers are required to report annually to the Minister or designated official for the implementation of (a) the use of foreign workers, (b) Education and training for foreign worker companions, (c) technology transfer and skills transfer from foreign workers to companion workers. To ensure the implementation of these provisions, Article 35 of PP No. 34 of 2021 regulates the supervision of the use of foreign workers, namely (1) Labor inspectors at the ministry that organizes government affairs in the field of labor, (2) Immigration officials who are tasked with the supervision and enforcement of immigration in a coordinated manner according to the scope of their respective duties and authorities.⁵

The article on the supervision of foreign workers, particularly in the context of technology transfer and transfer of expertise in the use of foreign workers to Indonesian workers as companions, contains a legal problem, namely the form of coordination of supervision between immigration and labor inspectors (vague norms).⁶ Therefore, it is necessary to conduct research on "Supervision of the use of foreign workers in the context of technology transfer and transfer of expertise from to companion workers/TKI" by raising the following issues:

1. How are the regulations for supervising the use of foreign workers for technology transfer and skills transfer to Indonesian workers as assistants?
2. Is the supervision of the use of foreign workers based on current laws and regulations able to realize the transfer of technology and skills to accompanying workers/Indonesian migrant workers?
3. What are the integrated supervision norms that can ensure the implementation of technology transfer and skills transfer to accompanying workers/Indonesian migrant workers?

² Matsuura, Toshiyuki, and Hisamitsu Saito. "Foreign direct investment and labor demand by skills in Indonesian manufacturing firms." *Review of World Economics* 159.4 (2023): 921-941. <https://link.springer.com/article/10.1007/s10290-022-00485-y>

³ Adi Ahdiat, Foreign Workers Increase in 2022, More than Pre-Pandemic (17/01/2023 19:10 WIB) accessed from the page <https://databoks.katadata.co.id/datapublish/2023/01/17/tenaga-kerja-asing-meningkat-pada-2022-lebih-banyak-dari-pandemi>, on May 2, 2025.

⁴ Zulfikar, Muhammad Nahyan, et al. "Knowledge Transfer of Foreign Workers (TKA) in Indonesia (Viewed from the Aspects of Regulation and Policy)." *Ius Civile: Reflections on Law Enforcement and Justice* 7.1 (2023): 38-52.

⁵ Taufik, Lalu Muhammad Lukman, Zainal Asikin, and Djumardin Djumardin. "Company Responsibilities Towards Foreign Workers Based on Government Regulation No. 34 of 2021." *Journal of Education and Development* 12.2 (2024): 455-461. DOI: 10.37081/ed.v12i2.6208

⁶ Rahmatika, Nurlia, and Nur Siti Annazah. "Knowledge and Technology Transfer Through Foreign Worker Mentoring Activities (Case Study in Yogyakarta)." *Journal of Manpower* 15.1 (2020): 27-41. <https://doi.org/10.47198/naker.v15i1.64>

A. Regulation of Supervision of Foreign Workers in the Context of Technology Transfer and Skills Transfer to Indonesian Workers as Companions.

Supervision of foreigners is an effort to support the maintenance of national stability and interests, state sovereignty, security and public order, and also to maintain vigilance against any negative impacts arising from the movement of people between countries. Thorough and coordinated monitoring of the presence and activities of foreigners in Indonesian territory is necessary, but without neglecting transparency in providing services to foreigners, especially foreign workers.⁷ These supervisory measures are essentially accompanied by immigration enforcement to create a secure environment. enforcement law Which fast And appropriate on every violation immigration which is conducted by person foreign Which is at in Indonesia.

Based on Law No. 3 of 1951 concerning the Declaration of the Enactment of Law No. 23 of 1948 concerning Labor Supervision, supervision of laws and regulations in the field of labor falls under the authority of the Labor Inspectorate.⁸ In Presidential Regulation No. 21 of 2010 concerning Labor Supervision, it is stated that Labor Supervision is the activity of supervising and uphold implementation regulation legislation in field employment. Furthermore, Article 22 paragraph 1 states that method supervision employment implemented in accordance with provision regulation legislation.

Law No. 3 of 1951 concerning Labor Supervision is a law from the old order which is still maintained by the Indonesian Government even though in substance the law has many shortcomings/weaknesses so that it is less able to meet current legal needs. One of them is the absence of a mandate for further implementation in the regulations below it such as Government Regulations or Presidential Regulations, so that the implementing regulations for this law are not found.⁹ After the issuance of Law No. 13 of 2003 concerning Manpower, labor supervision was then regulated in Article 178 paragraph (2) which mandates further regulation by Presidential Regulation. To implement it on March 29, 2010, Presidential Regulation No. 21 of 2010 concerning Manpower Supervision was stipulated. To implement this Presidential Regulation, the Government stipulated Minister of Manpower Regulation No. 33 of 2016 concerning Procedures for Manpower Supervision.

From the various regulations on labor supervision above, it appears that the regulations on labor supervision are not arranged in a planned and systematic manner in accordance with the hierarchy of Indonesian laws and regulations and the formation of one regulation with another within a long distance/period of time. For example, Law No. 13 of 2003 concerning Manpower was only implemented 7 (seven) years later with Presidential Decree No. 21 of 2010. Likewise, the issuance of Ministry of Manpower No. 33 of 2016 to implement Presidential Decree No. 21 of 2010 waited 6 (six) years. This shows that the Government's " *political will* " towards labor/employment supervision has received less attention, including supervision of the use of foreign workers.

In the current use of foreign workers, permission from the Minister of Manpower is no longer required as stipulated in Article 42 paragraph 1 of Law No. 13 of 2003 concerning Manpower. In Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation to Become Law (Job Creation Law) only requires every employer who employs foreign workers to have a Foreign Worker Utilization Plan (RPTKA) approved by the Central Government.¹⁰ Except for directors or commissioners with certain share ownership, or shareholders, diplomatic and consular employees at foreign representative offices, foreign workers needed by foreign workers employers in the type of production activities that have stopped due to emergencies, vocational, technology-based *start-ups* , business visits, and research for a certain period.

This policy change aligns with the spirit of deregulation through the simplification of licensing regulations, including the use of foreign workers, to increase investment and improve the national economy. Indonesia needs to make efforts to improve the quality of ease of doing business to compete with other countries.¹¹ It is appropriate for

⁷ Hendrawan, Hendrawan, Lidya Marsaulina Siregar, and Maulana Shatrya. "The Role and Supervision of Immigration in Facing Threats to State Sovereignty." *JHIP-Jurnal Ilmiah Ilmu Pendidikan* 5.12 (2022): 5534-5543.

⁸ Rianto, Teguh. "Employment Supervision in Companies Based on Article 2 Paragraph (2) of Law Number 3 of 1951 Concerning Labor Supervision." *PALAR (Pakuan Law Review)* 2.1 (2016).

⁹ Utami, Sheren Murni, Budiman Ginting, and Agusmidah Agusmidah. "Repositioning of Labor Supervisors for Enforcement of Law No. 13 of 2003 Concerning Manpower in North Sumatra Province." *Law Journal* 1.2 (2021): 31-47.

¹⁰ Yitawati, Krista, Meirza Aulia Chairani, and Angga Pramodya Pradhana. "Problems of Law Number 6 of 2023 concerning Job Creation, Employment Cluster, in Providing Worker Protection and Welfare." *Jurnal Rechtsens* 13.1 (2024): 97-118. DOI: <https://doi.org/10.56013/rechtsens.v13i1.2671>

¹¹ Lalu Husni, Omnibus Law and Legal Protection for Workers Post-Law No. 6 of 2023, Damera Press, Jakarta, 2024, p. 69.

directors or commissioners, as shareholders, to be granted facilities in the form of exemptions without the need for RPTKA approval, as they are beneficial in opening up job opportunities for Indonesian migrant workers. Similarly, experts are needed to repair business activities halted by natural or non-natural disasters, technology-based *startups*, business visits, and researchers.

Supervision of the use of foreign workers in Indonesia is regulated in Law Number 13 of 2003 concerning Manpower, specifically Articles 176 to 181. This supervision involves the Directorate General of Development. Supervision of the use of foreign workers is carried out by Manpower Inspectors at the ministry that organizes government affairs in the field of manpower and/or the agency that organizes government affairs in the field of manpower at the provincial level; and/or Immigration officials tasked with immigration supervision and enforcement, in a coordinated manner according to the scope of their respective duties and authorities. This is in line with the provisions in Article 35 of Government Regulation No. 34 of 2021 concerning the Use of Foreign Workers.¹²

Article 9 of the Minister of Manpower Regulation No. 33 of 2016 concerning Procedures for Manpower Supervision states that the implementation of manpower supervision is carried out through the following stages:

- a. preventive education, which is a coaching activity as a prevention effort through the dissemination of Employment Norms, technical advice and mentoring;
- b. non-judicial repressive, which is a coercive effort outside the courts to fulfill the provisions of labor laws and regulations in the form of an Inspection Note as a warning or a statement of willingness to fulfill labor laws and regulations based on an inspection and/or testing; and
- c. judicial repression, which is a coercive effort through the courts by carrying out an investigation process by the Manpower Supervisor as the Manpower PPNS.

Article 9B of the Minister of Manpower Regulation No. 1 of 2020 concerning Amendments to the Minister of Manpower Regulation No. 33 of 2016 concerning Procedures for Manpower Supervision states that in violations of certain Manpower Norms, judicial repressive measures can be carried out directly without going through the stages of implementing Manpower Supervision. One of the violations of certain Manpower Norms referred to is the violation of norms for the use of Foreign Workers in the form of not having a permit (RPTA ratification).

Article 28 paragraph 2 of the Minister of Manpower Regulation No. 1 of 2020 states that technology transfer and expertise transfer in the use of foreign workers are carried out through education and/or job training for foreign worker companions so that they have the ability to implement the technology used by foreign workers in carrying out their work.

Thus, the responsibility for technology transfer and skills transfer lies with the Company using TKA. Due to the importance of this obligation, it should be included in the RPTKA application requirements document in addition to a statement to carry out education and job training for Indonesian workers in accordance with the qualifications of the position held by the TKA, as well as a draft of a cooperation agreement between the TKA User and an accredited domestic or foreign educational and/or job training institution because not all TKA Users have an accredited job training institution. TKA users or employers are very diverse, ranging from government agencies, foreign country representatives, and international bodies, foreign trade representative offices, foreign company representative offices, and foreign news agencies conducting activities in Indonesia, foreign private companies doing business in Indonesia, legal entities in the form of limited liability companies or foundations established under Indonesian law or foreign business entities registered with the authorized agency, social, religious, educational, and cultural institutions, impresario service businesses, and business entities as long as they are permitted by law to use TKA.¹³

B. Supervision of foreign workers based on existing laws and regulations has not been able to realize the transfer of technology and skills from foreign workers to accompanying workers/TKI.

As explained above, TKA Employers who employ TKA are required to have a RPTA approved by the Minister or appointed official. RPTKA approval is used as a recommendation to obtain a visa and residence permit

¹² Budiarta, I., and Nyoman Putu. " *Work Permit for Foreign Workers in Indonesia* ." *J. Legal Ethical & Regul. Issues* 21 (2018): 1.

¹³ Taufik, Lalu Muhammad Lukman, Zainal Asikin, and Djumardin Djumardin. "Company Responsibilities Towards Foreign Workers Based on Government Regulation No. 34 of 2021." *Journal of Education and Development* 12.2 (2024): 455-461. DOI: 10.37081/ed.v 12i2.6208

for work for TKA. ¹⁴Based on Article 1 number 9 of the Regulation of the Minister of Law and Human Rights No. 16 of 2018 concerning Procedures for Granting Visas and Residence Permits for Foreign Workers, what is meant by a Limited Stay Visa, hereinafter abbreviated as Vitas, is a written statement given by an authorized official at the Representative Office of the Republic of Indonesia or in another place determined by the Government of the Republic of Indonesia which contains approval for Foreigners to travel to the Territory of Indonesia and becomes the basis for granting a Limited Stay Permit for work. While a Limited Stay Permit, hereinafter abbreviated as Itas, is a permit given to Foreigners to stay and be in the Territory of Indonesia for a certain period of time to work. ¹⁵

Supervision of the use of foreign workers is carried out by the Manpower Inspectorate at the ministry responsible for government affairs in the field of manpower and Immigration officials in accordance with the scope of their respective duties and authorities. Supervision carried out by the Manpower Inspectorate at the Ministry of Manpower relates to the legality of the approval of the RPTKA for foreign workers employers, while Immigration is concerned with Limited Stay Permit Visas (Vitas) and Limited Stay Permits (ITAs).

To implement integrated supervision of foreigners, the Ministry of Law and Human Rights has issued Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 50 of 2016 concerning the Foreigner Monitoring Team. Article 1 number 2 states that the Foreigner Monitoring Team, hereinafter referred to as the Pora Team, is a team consisting of government agencies and/or institutions that have duties and functions related to the presence and activities of Foreigners. The Pora Team is formed at the provincial level, the Pora Team at the district/city level, and the Pora Team at the sub-district level. The organizational structure of the Pora Team at the central level consists of an Advisor, Chairperson, Secretary and members consisting of at least elements of the Ministry of Law and Human Rights, Ministry of Home Affairs, Ministry of Foreign Affairs, Ministry of Tourism, Indonesian National Armed Forces, Indonesian National Police, Attorney General's Office, Ministry of Finance, Ministry of Health, Ministry of Manpower, Ministry of Religious Affairs, Ministry of Maritime Affairs and Fisheries, Ministry of Education and Culture, Ministry of Research, Technology and Higher Education, Ministry of Social Affairs, Ministry of Transportation, Ministry of Youth and Sports, Ministry of State Secretariat, Indonesian Institute of Sciences, State Intelligence Agency, National Narcotics Agency, TNI Strategic Intelligence Agency, Maritime Security Agency; and National Counterterrorism Agency. ¹⁶

The Pora Team members are tasked with providing advice and considerations to relevant government agencies and/or institutions regarding matters related to Foreigner Supervision. In carrying out these duties, the Pora Team has the following functions: ¹⁷

- a. coordination and exchange of data and information;
- b. collection of information and data on the presence of foreigners in stages from village or sub-district level to provincial level;
- c. analysis and evaluation of data/information related to the implementation of Foreigner Supervision and creating a Foreigner Supervision map;
- d. resolution of problems regarding the presence and activities of foreigners;
- e. implementation and regulation of relations and cooperation in the context of Foreigner Supervision;
- f. preparation of joint operations plans of a special or incidental nature, including independent operations plans for each member agency of the Pora Team; and
- g. implementation of other functions determined by the Head of the Pora Team relating to the Supervision of Foreigners.

In addition to carrying out the above duties and functions, the Pora Team can also conduct joint operations if necessary. These joint operations can be special joint operations or incidental joint operations. Joint operations are carried out based on operational plans. Special joint operations are operations carried out at certain times or for specific activities. Incidental joint operations are operations carried out at any time in the event of reports from the public and/or

¹⁴ Suyasa, I. Gde Dharma. "Regulation of Foreign Workers in Indonesia from the Perspective of the State Sovereignty Approach." *Journal de Facto* 7.1 (2020): 86-107. See also Article 14 paragraph 6 PP No. 43 of 2021 concerning the Use of TKA.

¹⁵ See Article 1 number 10 of the Regulation of the Minister of Law and Human Rights Number 16 of 2018 concerning Procedures for Granting Visas and Residence Permits for Foreign Workers.

¹⁶ See Article 11 of the Regulation of the Minister of Law and Human Rights Number 50 of 2016 concerning the Foreigner Monitoring Team.

¹⁷ See Article 15 of the Regulation of the Minister of Law and Human Rights Number 50 of 2016 concerning the Foreigner Monitoring Team.

members of the Pora Team .¹⁸

From the membership side, the Pora Team is too "fat" so that it will experience obstacles in carrying out its duties and ego. sectoral, so that impact on the weak coordination which should be an important thing in the supervision of foreign workers. It means fellow agency And institution Still prioritize Individual¹⁹ interests impact bureaucratic processes. It should consist solely of the Ministry responsible for immigration, with law enforcement/state security officials acting as coordinators, while other agencies are only involved if there are issues with foreign workers related to their respective areas of responsibility. The Immigration Law already regulates the monitoring methods in detail. person foreigners, both administrative supervision and field/operational supervision.

As the institution responsible for supervising foreign workers, the Ministry of Manpower has not yet issued regulations regarding the supervision of foreign workers that involve other agencies that have the authority to supervise foreign workers, in this case foreign workers. The Ministry of Manpower has only established a Foreign Worker Supervision Task Force (Satgas) to strengthen supervision of foreign workers. The formation of this supervisory task force is stipulated in the Decree of the Minister of Manpower No. 73 of 2018 concerning the Establishment of the Foreign Worker Task Force. This foreign worker supervision task force consists of representatives from 24 Ministries/Institutions, starting from the Coordinating Minister for Political, Legal and Security Affairs, the Coordinating Minister for Economic Affairs, Cabinet Secretariat, Ministry of Manpower, Ministry of Law and Human Rights, Ministry of Home Affairs, Ministry of Foreign Affairs, Ministry of Energy and Mineral Resources, Industry, Transportation, Maritime Affairs, Fisheries, Public Works and Public Housing, Health, Education, Culture & Research and Technology, Religion, Communication and Information Technology, State-Owned Enterprises, Sports, Tourism, Indonesian National Police, BIN, BKPM, and BIS TNI. With the existence of the Task Force, it is hoped that the TKA supervision function can run in an integrated and comprehensive manner. This TKA supervision task force also strengthens the supervision function that has been carried out by the Foreigner Supervisory Team (Timpora). According to him, Timpora is tasked with supervising foreign nationals in general, while the Task Force focuses on supervising foreign nationals .

Similar to the Timpora (Timpora) established by the Ministry of Law and Human Rights, the Indonesian Migrant Worker Task Force (TKI) established by the Ministry of Manpower also has an overly large membership, making it difficult to coordinate its duties, particularly in preventing, prosecuting, and enforcing legal norms related to the use of foreign workers. Furthermore, the duties and functions of several ministries and institutions involved are unclear.

With the supervision model carried out by both Immigration and the Ministry of Manpower as above, it is not surprising that supervision of foreigners, especially foreign workers, is not optimal. Cases of illegal foreign workers due to misuse of residence permits or expired residence permits (overstayed), foreign workers working in Indonesian territory without a work permit or having a work permit but using it not in accordance with the permit held. For example, Mr. X's work permit is in the name of PT A, but in reality the person concerned works for PT B and others still often surface.²⁰ Not to mention the issue of technology and/or expertise transfer from foreign workers to Indonesian workers as companions which is difficult to do for various reasons such as the reluctance of the foreign workers themselves to share their knowledge with the Indonesian workers, the foreign workers cannot speak Indonesian, work culture (the Indonesian workers as companions are not ready/lack confidence), unclear standard operating procedures for education/training.

²¹Based on the results of the investigation by the Indonesian Ombudsman regarding the problems of public service provision in the context of placement and supervision of foreign workers (TKA) in Indonesia, it was found that the problem in the placement of foreign workers is the lack of integration of data between the Central Ministries/Institutions and Regional Governments regarding the number, distribution, and flow of foreign workers in Indonesia. From the supervisory side, it was found that the problem was that the supervision of foreign workers

¹⁸ See Article 17 of the Regulation of the Minister of Law and Human Rights Number 50 of 2016 concerning the Foreigner Monitoring Team.

¹⁹ Romadhon, Romadhon, and Agus Riwanto. "The Ideal Role of the Foreigner Monitoring Team in Supervising Foreign Workers in Indonesia (Case Study at the Surakarta Class 1 Immigration Office)." *Res Publica: Journal of Public Policy Law* 3.3: 233.

²⁰ Ariani, Nevey Varida. "Law Enforcement Against Illegal Foreign Workers in Indonesia." *Journal of Legal Research p-ISSN 1410* (2018): 5632. 123

²¹ Zulfikar, Muhammad Nahyan, et al. "Knowledge Transfer of Foreign Workers (Tka) in Indonesia (Viewed from the Aspects of Regulation and Policy)." *Ius Civile: Reflections on Law Enforcement and Justice* 7.1 (2023): 49. See also in Ombudsman RI, Quarterly Report II (2018).

in Indonesia by the Foreigners Supervision Team (Tim Pora) was not optimal through law enforcement, both the imposition of administrative sanctions on companies that commit violations, investigations and criminal investigations and repatriation (deportation) of foreign workers. In addition, the Indonesian Ombudsman also found several other problems, such as foreign workers who are actively working but the validity period of the Foreign Worker Employment Permit (IMTA) has expired and is not extended, companies that employ foreign workers whose whereabouts cannot be ascertained, foreign workers who work as manual laborers, and foreign workers who have become Indonesian citizens but do not have a work permit.²²

C. Integrated Supervisory Norms that Can Realize the Implementation of Technology Transfer and Skills Transfer from Foreign Workers to Companion Workers/TKI.

The goal of implementing technology transfer is to improve the skills and competencies of local workers so they can be on par with foreign workers, which can ultimately increase independence and advance the nation's competitiveness. Technology arranged in investment in Indonesia with the aim of creating accelerated growth innovation and overall national economic competitiveness. Thus over technology is very necessary. In Article 1 number 15 of the Law Number 11 of 2019 concerning the National System of Science and Technology Transfer Technology is diversion ability utilize and master science and Technology inter-institutional, body, or person, Good which are in the domestic environment as well as originate from outside country to in country or on the contrary.

The presence of technology if it is not maximized by technology transfer will hinder the development of a country. Technology transfer can be one of the factors in achieving sustainable *development* Which in accordance with objective country Which concerned. In perspective internationally, namely in the United Nations Conference on Trade Development (UNCTAD) *Draft Code of Conduct on Transfer of Technology*, that over technology is:²³

"technology" US "systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service", which does not extend to the transactions involving the sale or lease of goods".

From this definition it is clear that many efforts are made in produce and/or increase technology so that technology the own Power competitive. On side investment, improvement ability technology done with objective increase capacity And ability national technology.²¹ The amount of time spent and the large budget to create a technology it is common for foreign investors "stingy" For do over technology to local companies.

Looking at the current conditions, Indonesia does not yet have concrete regulations. related to the technology transfer implementation mechanism, so that foreign investors are reluctant in do over technology to company national. Matter This can proven with data from *The Global Competitiveness Report World Economic Forum* (WEF Report) which places Indonesia at 80th position out of 137 countries for the *Technological Readiness indicator*. With In this regard, it is hoped that Indonesia can regulate the obligations of companies that employ TKA against transfer technology on Indonesian migrant workers in a way concrete for the sake of national interests.

Obligation implementation over technology has poured on Law- Law Number 11 of 2019 concerning the National System of Science and Technology Technology (National Science and Technology System Law) in conjunction with Article 14 and Article 45 of Law No. 11 of 2020 concerning Job Creation. Article 10 paragraph (4) and Article 18 paragraph (3) letter d of the Investment Law specifically regulate The obligation of foreign investment companies to transfer technology to Indonesian migrant workers (TKI) for the foreign workers they have employed. Legislation that specifically and clearly regulates the transfer of technology and expertise in the use of foreign workers as an implementation of Law No. 3 of 1958 concerning the Use of Foreign Workers or in Law No. 13 of 2003 concerning Manpower, so that in its implementation it is unclear whether it is carried out by the foreign workers themselves or by the companies using the foreign workers. The process of technology and expertise transfer only became clear after the enactment of Law No. 6 of 2023 concerning Job Creation and the subsequent issuance of Government Regulation No. 34 of 2021 concerning the Use of Foreign Workers and Ministerial Regulation No. 8 of 2021 concerning the Implementing Regulations of Government Regulation No. 34 of 2021 concerning the Use of Foreign Workers.

So far, the National Science and Technology System Law only regulates that technology transfer can be

²² Ibid.

²³ United Nations Conference on Trade Development (UNCTAD), *Draft Code of Conduct on Transfer of Technology*, UNCTAD Series, (2001), Chapter 1, par t .1.2. accessed from the page https://unctad.org/system/files/official-document/tdr2001_en.pdf. Compare with Kaul, J.L. "UNCTAD *Draft Code of Conduct on Transfer of Technology*, *Third World Demands and Western Responses* ." *Foreign Trade Review* 25.4 (1991): 366-387.

carried out commercially and non-commercially. The implementation of technology transfer must fulfill the provisions in Article 29 paragraph (2) of the National Science and Technology System Law. This is done For speed up growth economy based technology, Which later will synergize with Government Center And Government Area. Thus, if we only refer to the National Science and Technology System Law and the Job Creation Law, over technology very difficult to implement.²⁴

Article 29, paragraph 1 of the National Science and Technology System Law states that technology transfer can be carried out commercially or non-commercially. Technology transfer is carried out under the following conditions:

- a. Priority is given to recipients of Technology Transfer who reside in the territory of the Unitary State of the Republic of Indonesia;
- b. Technology Transfer recipients are able to utilize and master Science and Technology for the benefit of society, individuals and the state;
- c. Intellectual Property and the results of Research and Development activities that are transferred to technology are not declared as confidential in accordance with the provisions of laws and regulations; and
- d. The implementation of Technology Transfer is carried out without conflicting with public order and statutory provisions.

Furthermore, Article 29 paragraph 3 states that Technology Transfer is carried out through licensing, cooperation, Science and Technology service provision; and/or the implementation of Technology Transfer which is carried out without conflicting with public order and the provisions of laws and regulations.

The role of regulatory institutions is quite important in the implementation of technology transfer, mechanism This should implemented by involving the Ministry responsible for the field of technology. Based on Presidential Regulation of the Republic of Indonesia No. 62 of 2021 concerning the Ministry of Education, Culture, Research, and Technology (Kemendikbudristekdikti), one of its duties and functions is the formulation and determination of policies in the field of science and technology.

Based on function This The Ministry of Education, Culture, Research, Technology and Higher Education as a regulatory institution has obligation For coordinate policy over technology in development national Science and Technology Which poured out on Policy Strategic Development National Science Knowledge And Technology (Jakstranas Science and technology).

In addition, to ensure that the transfer of technology and expertise in the use of foreign workers has been carried out to accompanying Indonesian migrant workers through education and/or job training, competency tests must be carried out by a certification body recognized by the Government.

CONCLUSION

Supervision of the use of foreign workers in the context of technology transfer and/or transfer of skills to accompanying Indonesian migrant workers is regulated in Law No. 13 of 2003 concerning Manpower in conjunction with Presidential Regulation No. 21 of 2010 concerning Manpower Supervision in conjunction with Ministerial Regulation No. 33 of 2016. In Ministerial Regulation No. 33 of 2016 concerning Procedures for Manpower Supervision, it is stated that the implementation of manpower supervision is carried out through the stages of (1) preventive education, (2) non-judicial repression, and (3) judicial repression. In Article 9B of Ministerial Regulation No. 1 of 2020 concerning Amendments to Ministerial Regulation No. Law No. 33 of 2016 concerning Procedures for Labor Supervision states that violations of Labor Norms involving the use of Foreign Workers, such as the absence of permits (certification of certain RPTAs), fall under the category of judicial repressive measures, which can be carried out directly without going through the stages of Labor Supervision. Meanwhile, Immigration oversees Limited Stay Permit Visas (Vitas) and Limited Stay Permits (ITAs).

Current supervision of the use of foreign workers has not been able to realize the transfer of technology and transfer of skills from foreign workers to accompanying workers/TKI because based on the Minister of Manpower Regulation No. No. 8 of 2021 it is clear that in fact the transfer of technology and/or transfer of skills from foreign workers to TKI as accompanying workers is the full responsibility of the Company Using the Foreign Workers, either through assignments to participate in certain educational strata programs or assignments to participate in job training programs at educational and/or training institutions with at least B accreditation in accordance with the minimum competency qualifications of the position held by the foreign workers. However, the

²⁴Svalerit, Galih Agra, and Cindy Haura Irawan. "The Neglect of Technology Transfer Interests in the Urgency of Investment Growth During the Pandemic." *Jurnal Hukum Lex Generalis* 2.8 (2021): 673.

norms regarding cooperation between foreign workers users and educational or job training institutions have not been regulated as one of the required documents for submitting the RPTKA. In addition, the Timpora formed by the Ministry of Law and Human Rights and the TKI Task Force formed by the Ministry of Manpower involve too many Ministries/Institutions/Agencies, making coordination difficult in carrying out their duties, especially in carrying out prevention, action and enforcement of legal norms related to the use of foreign workers. In addition, several Ministries/Institutions/Agencies involved have unclear duties and functions regarding the use of foreign workers.

Integrated supervision norms that can realize the implementation of technology transfer and/or transfer of expertise in the use of foreign workers to Indonesian migrant workers as companions are carried out by the Ministry of Manpower, as well as Immigration, Competency Certification Institutions recognized by the Government and institutions responsible for technology such as the Ministry of Education and Culture, Research & Technology and Higher Education to ensure that technology transfer has occurred or at least that the accompanying Indonesian migrant workers have the minimum competency of the same position as the one occupied by the foreign workers. There are certain permits (RPTA ratification) including the category of judicial repressive actions that can be carried out directly without going through the stages of implementing Employment Supervision. While Immigration supervises Limited Stay Permit Visas (Vitas) and Limited Stay Permits (ITAs).

Current supervision of the use of foreign workers has not been able to realize the transfer of technology and transfer of skills from foreign workers to accompanying workers/TKI because based on the Minister of Manpower Regulation No. No. 8 of 2021 it is clear that in fact the transfer of technology and/or transfer of skills from foreign workers to TKI as accompanying workers is the full responsibility of the Company Using the Foreign Workers, either through assignments to participate in certain educational strata programs or assignments to participate in job training programs at educational and/or training institutions with at least B accreditation in accordance with the minimum competency qualifications of the position held by the foreign workers. However, the norms regarding cooperation between foreign workers users and educational or job training institutions have not been regulated as one of the required documents for submitting the RPTKA. In addition, the Timpora formed by the Ministry of Law and Human Rights and the TKI Task Force formed by the Ministry of Manpower involve too many Ministries/Institutions/Agencies, making coordination difficult in carrying out their duties, especially in carrying out prevention, action and enforcement of legal norms related to the use of foreign workers. In addition, several Ministries/Institutions/Agencies involved have unclear duties and functions regarding the use of foreign workers. Integrated supervision norms that can realize the implementation of technology transfer and/or transfer of expertise in the use of foreign workers to Indonesian migrant workers as companions are carried out by the Ministry of Manpower, as well as Immigration, Competency Certification Institutions recognized by the Government and institutions responsible for the technology sector such as the Ministry of Education and Culture, Research & Technology and Higher Education to ensure that technology transfer has occurred or at least that the accompanying Indonesian migrant workers have the minimum competency for the same position as the one occupied by the foreign workers.

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