

AKIBAT HUKUM TERHADAP PERUSAHAAN YANG MEMPEKERJAKAN TENAGA KERJA ASING TANPA KEAHLIAN KHUSUS

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ABSTRAK

Tujuan penelitian ini adalah mengetahui syarat dan prosedur penggunaan TKA di Indonesia sesuai peraturan perundang-undangan yang berlaku dan mengetahui akibat hukum terhadap perusahaan yang mempekerjakan TKA tanpa keahlian khusus.

Jenis penelitian yang dilakukan adalah penelitian hukum normatif. Jenis data yang digunakan adalah data sekunder berupa peraturan perundang-undangan, pendapat para ahli, doktrin yang diperoleh dari studi kepustakaan berupa buku serta jurnal, artikel, media massa yang ada di *website*. Data sekunder didukung oleh data primer yang diperoleh dari narasumber pejabat di Dinas Ketenagakerjaan dan pejabat di Keimigrasian kota Medan dengan teknik wawancara. Pendekatan penelitian adalah pendekatan perundang-undangan dan pendekatan konseptual. Analisis data dilakukan secara kualitatif.

Hasil penelitian diperoleh bahwa syarat perusahaan pengguna TKA cukup hanya memiliki RPTKA yang disahkan oleh Pemerintah Pusat sesuai Pasal 42 ayat (1) UU Ketenagakerjaan setelah UU Cipta Kerja, tidak perlu lagi memiliki IMTA sebagaimana diatur UU Ketenagakerjaan sebelumnya, sehingga memudahkan TKA masuk ke Indonesia. RPTKA juga tidak perlu untuk jabatan direksi atau komisaris, pegawai diplomatik dan konsuler atau TKA yang dibutuhkan pada jenis kegiatan produksi yang terhenti karena keadaan darurat, vokasi, perusahaan rintisan (*start up*) berbasis teknologi, kunjungan bisnis, dan penelitian untuk jangka waktu tertentu. Prosedur Penggunaan TKA dimulai dengan pengajuan RPTKA secara daring kepada Kementerian Ketenagakerjaan, untuk dilakukan penilaian kelayakan pengesahan RPTKA, termasuk verifikasi keaslian dokumen ijazah, sertifikat TKA. Penerbitan pengesahan RPTKA kemudian pengajuan VITAS dan ITAS. Akibat hukum terhadap perusahaan yang mempekerjakan TKA tanpa keahlian khusus adalah pemberian sanksi administratif yang merupakan kewenangan instansi Ketenagakerjaan, berupa denda, penghentian sementara proses permohonan Pengesahan RPTKA, dan/atau pencabutan Pengesahan RPTKA dan *Blacklist* bagi pemberi kerja. Sebelum UU Cipta Kerja sanksi yang diberikan adalah sanksi pidana, sanksi pidana sudah dihapuskan. Sanksi yang merupakan kewenangan instansi Imigrasi adalah mengenai legalitas masuknya TKA dan perizinan tinggal TKA di Indonesia yaitu deportasi, sanksi administratif, dan sanksi pidana.

Kata Kunci: Akibat Hukum, Tenaga Kerja Asing, Keahlian, Izin, Hukum Ketenagakerjaan.

LEGAL CONSEQUENCES FOR COMPANIES THAT EMPLOY FOREIGN WORKERS WITHOUT SPECIAL SKILLS

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ABSTRACT

The purpose of this study was to determine the terms and the procedures for the use of foreign workers in Indonesia. In accordance with applicable laws and regulations, to find out the legal consequences for companies that employ foreign workers without special skills.

The type of research conducted is normative legal research. The type of data used is the secondary data in the form of laws and regulations, expert opinions, doctrines obtained from literature studies in the form of books and journals, articles, mass media on the website. Secondary data is supported by the primary data obtained from official sources at the Department of Manpower and Immigration officials in the city of Medan using interview techniques. The research approach is a statutory approach and a conceptual approach. Data analysis was carried out qualitatively.

The results showed that the requirement for companies using TKA is to only have an RPTKA which was legalized by the Central Government according to Article 42 paragraph (1) of the Manpower Act after the Job Creation Act, no longer need to have an IMTA as previously regulated by the Manpower Act, making it easier for foreign workers to enter Indonesia. RPTKA is also not necessary for the positions of directors or commissioners, diplomatic and consular employees or foreign workers needed for types of production activities that are stopped due to emergencies, vocational, technology-based start-up companies, business visits, and research for a period of time. The procedure for the use of foreign workers begins with submitting an online RPTKA to the Ministry of Manpower, to conduct an assessment of the feasibility of ratifying the RPTKA, including verification of the authenticity of diploma documents, foreign workers certificates. Issuance of ratification of the RPTKA and then the submission of VITAS and ITAS. The legal consequences for companies that employ foreign workers without special skills are administrative sanctions under the authority of the Manpower agency, in the form of fines, temporary suspension of the application process for RPTKA endorsement, and/or revocation of RPTKA endorsement and blacklists for employers. Prior to the Job Creation Law, the sanction imposed was criminal sanction, criminal sanctions had been abolished. Sanctions under the authority of the Immigration agency are regarding the legality of the entry of foreign workers and permits for foreign workers to stay in Indonesia, namely deportation, administrative sanctions, and criminal sanctions.

Keywords: *Legal Consequences, Foreign Workers, Expertise, Permits, Labor Law.*