

The Constitutionality of the Policy of Granting Limited Stay Visas as an Instrument to Increase Investment in Indonesia

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ABSTRACT

The problems that exist in Indonesia, which require the state to attract foreign investment, are also caused by other factors, particularly the benefits or profits received by the country. The form of research used in this thesis is normative juridical research, which refers to legal norms contained in laws and regulations. This study employs a statutory approach and a conceptual approach. The data in this study were analyzed qualitatively, meaning that the research method refers to legal norms contained in statutory regulations. The results of this study indicate that the relationship between business law and immigration law in relation to foreign investment is regulated under Law Number 11 of 2020 concerning Job Creation. Philosophically, and in the spirit of globalization, the use of foreign workers in developing countries is intended to facilitate the transfer of knowledge and technology. This is in line with the continuity of business and investment in Indonesia. The issuance of Limited-Stay Visas for foreign investment, from the perspective of business law, constitutes a form of state sovereignty within a rule-of-law state, which has full authority to determine and regulate the limits for foreigners residing in a country. Restrictions on residence permits are intended to protect national interests in social, cultural, economic, employment, security, and public order aspects.

INTRODUCTION

The Republic of Indonesia possesses abundant natural attractions and investment opportunities that can attract foreign nationals to travel and work in Indonesia (Meivitawanli, 2022; Tz-Li et al., 2026; Widiatedja & Suyatna, 2022; Wiraputra, 2023). Indonesia has become a focal point for many countries, not only in the political sphere but also in social, economic, and security aspects (Doing et al., 2024; Fischer & Nisa, 2025; Okhrimenko et al., 2023). This condition encourages foreign nationals to reside in Indonesia.

The supervision of the movement, transit, and stay of foreigners in Indonesia is considered increasingly important (Hasan et al., 2024; Wibowo & Yazid, 2024). In response, the Government enacted Law Number 6 of 2011 concerning Immigration, as well as Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2015 concerning Visas, Residence Permits, Facilities, and Immigration Supervision for the Diaspora, and later aligned with Law Number 11 of 2020 concerning Job Creation.

Based on Article 45 of Law Number 11 of 2020 concerning Job Creation, employers of foreign workers are required to appoint Indonesian workers as counterparts to support

technology and skill transfer, provide education and job training in accordance with the qualifications of positions occupied by foreign workers, and repatriate foreign workers to their home countries after the employment relationship ends (Mashari, 2024; Zainuddin et al., 2023). However, this obligation does not apply to foreign workers occupying certain positions (NurFitriana & Nur, 2021). This provision indicates that the use of foreign labor is not only intended to meet professional labor needs but also to improve the competence of domestic workers (Sarjana et al., 2023). On the other hand, foreign direct investment (FDI) refers to capital inflows from abroad that play an important role in supporting economic development, particularly in developing countries (Emako et al., 2022; Nupehewa et al., 2022). Limited domestic capital and low income levels are often obstacles to development financing; therefore, foreign investment becomes one of the essential funding sources to encourage economic growth, increase productivity, create employment opportunities, and accelerate technology and knowledge transfer (Habib, 2021; Tsaurai, 2023; Dao et al., 2023).

Not only is capital availability limited, but capital formation also remains low. The development of Foreign Direct Investment in Indonesia is driven by various challenges, including inadequate infrastructure, bureaucratic inefficiency, limited funding, unfavorable labor regulations, policy instability, unfavorable tax regulations, a low-skilled workforce, inflation, corruption, foreign exchange regulations, unstable governance, high taxation, weak work ethic, and crime, among others.

The various problems faced by Indonesia that necessitate foreign investment are also influenced by other factors, namely the benefits or advantages obtained by the country. Foreign capital can accelerate industrialization, thereby creating broader employment opportunities. The presence of foreign investment also contributes to societal modernization and strengthens both public and private sectors. In addition, foreign capital can increase output, which has a positive impact on national income through international trade. It is also considered more efficient than credit-based financing, which is often categorized as state debt.

Local workers who have received education and training through job training programs are expected to perform professionally; however, certain companies in Indonesia still require foreign workers for specialized skills. Therefore, the demand for foreign labor remains unavoidable. The development of globalization has also encouraged the movement of capital and investment flows across countries, as well as labor migration. This occurs because investments in other countries generally require direct supervision by owners or investors. Therefore, to ensure business continuity and investment stability, the government must carefully formulate policies to maintain a balance between foreign workers (and foreign capital) and domestic labor.

From a theoretical perspective, Development Law Theory has emerged and evolved in accordance with Indonesian conditions and societal plurality. This theory is grounded in the values of Pancasila, which emphasize familial and communal principles. Thus, the norms, principles, institutions, and rules within Development Law Theory encompass structural, cultural, and substantive dimensions, as described by Lawrence W. Friedman. (1990) Fundamentally, Development Law Theory provides a foundation for law as a “tool of social engineering,” where law functions as an essential system for a developing country such as Indonesia.

Immigration policies related to the economic and business sectors as an effort to encourage foreign investment are implemented through immigration facilitation in the form of visas (entry permits), residence permits, immigration supervision, and enforcement of the presence and activities of foreigners in Indonesian territory. These facilities include procedures, requirements, mechanisms, systems, tariffs or fees, and service products. These efforts are expected to maximize the absorption of Indonesian labor in an increasingly competitive global economic environment. Therefore, adjustments are needed in immigration policies and regulations related to facilitation, protection, and empowerment of cooperatives and micro, small, and medium enterprises, as well as improving the investment ecosystem and accelerating national strategic projects, including strengthening the protection and welfare of workers, particularly in the DKI Jakarta region.

Visas granted to foreigners consist of visit visas and limited-stay visas. Visit visas include single-entry and multiple-entry visit visas, which may be used for business discussions, goods procurement, and pre-investment activities. Limited-stay visas (VITAS) consist of work and non-work visas, which allow foreigners to stay in Indonesian territory for a maximum of two years. Immigration residence permits consist of visit stay permits, limited stay permits, and permanent stay permits. A visit stay permit is granted to holders of a visit visa, a limited stay permit is granted to holders of a limited stay visa, and a permanent stay permit is granted to holders of a limited stay permit who convert their residence status, including former Indonesian citizens who have renounced their citizenship. Immigration supervision and enforcement are carried out with due regard to national interests and public order, prioritizing preventive measures through Immigration Administrative Actions (TAK).

The novelty of this research lies in its integrated constitutional law perspective on the issuance of limited-stay visas as a state policy instrument. Unlike previous studies that primarily focused on administrative supervision challenges, this research examines the constitutional foundation of immigration policy as an expression of state sovereignty and its relationship with business law and the investment climate.

Based on previous research, various problems remain in the implementation of immigration policies related to the presence and activities of foreign workers in Indonesia. Research conducted by Ahmad Jazuli shows that the implementation of regulations concerning foreigners has not been optimal, as indicated by weak coordination among foreigner supervision teams and an increase in immigration violations. Similarly, Tony Mirwanto argues that Indonesia's participation in various international agreements that facilitate investment and the use of foreign labor has increased the number of foreign investors and workers entering Indonesia. This situation requires the government to strengthen supervision of residence permits and foreign worker activities, particularly as a consequence of visa facilitation policies. Meanwhile, Marli Pakasi explains that Law Number 6 of 2011 concerning Immigration has clearly regulated the supervision, control, and enforcement of foreign workers who violate residence permits. Based on these findings, the author is interested in further examining the enforcement of limited-stay visa issuance as a state policy instrument in supporting the investment climate from a constitutional law perspective.

This research focuses on two main issues: the regulation of the relationship between business law and immigration law in relation to foreign investment, and the constitutional accountability of government authority in granting limited-stay visas to foreign investors. The

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purpose of this study is to analyze the constitutional basis and state authority in granting limited-stay visas as part of immigration policy, as well as to assess its conformity with constitutional law principles such as legality, accountability, legal certainty, and protection of public interest. The findings are expected to provide theoretical contributions to the development of business and immigration law, as well as practical benefits by enriching the author's academic perspective, serving as a reference for the academic community of Universitas Pelita Harapan, and providing input for the Directorate General of Immigration in improving the quality of services and supervision of foreign nationals in Indonesia.

METHOD

Forms and approaches to the Settlement

The form of research that will be used in this thesis is normative juridical which refers to the legal norms in the Legislation. Data obtained through literature studies and as a complement is commonly referred to as secondary data. This study uses research and development on the rules/policies of granting Limited Stay Visas in supporting investment. The approaches to this research include:

1. Legislative Approach; Namely by reviewing all legal provisions related to the granting of Limited Stay Visas in supporting investment from a business law perspective.
2. Conceptual Approach; Namely by conducting a review of writings, books, and literature related to the process of implementing permits in granting Limited Stay Visas in supporting investment from a business law perspective.

Legal Ingredients

1. Primary legal materials, namely binding legal materials consisting of laws and regulations, jurisprudence, and so on. The primary legal materials that will be used in this writing include:
 - a. Constitution of the Republic of Indonesia of 1945
 - b. Law Number 13 of 1003 concerning Manpower
 - c. Law Number 6 of 1011 concerning Immigration
 - d. Law Number 11 of 1010 concerning Job Creation
 - e. PERMENKERTRANS NO. PER.01/MEN/III/1008 concerning Procedures for the Use of Foreign Workers
 - f. PERMENKERTRANS No. 16 of 1015 concerning Procedures for the Use of Foreign Workers
 - g. PERMENKUMHAM NO 19 Year 1011 Concerning Visas & Residence Permits
2. Secondary legal materials, namely legal materials that provide explanations of primary legal materials, such as Draft Laws, research results, scientific papers, seminar results and so on.
3. Tertiary legal materials, which are legal materials that provide instructions and explanations of primary legal materials and secondary legal materials such as legal dictionaries, large Indonesian dictionaries, and encyclopedias.

Data Collection/Acquisition Techniques

In this thesis research, what is used is a qualitative data analysis method, namely data that is obtained, selected and compiled systematically and then analyzed using various

provisions or regulations. To test the truth and honesty of the subject in revealing reality according to what he experienced, felt or imagined, it is necessary to use data checking with Triangulation analysis. Data processing techniques consist of several flows of activities that occur simultaneously, namely:

1. Data Reduction; That is the process of selecting disconnection from the simplification and transformation of "rough" data that arises from written records in the field or a form that sharpens, classifies, directs, discards unnecessary and coordinates data in such a way that conclusions can finally be drawn and verified.
2. Data Presentation; It is a set of structured information that provides the possibility of drawing conclusions and taking action.
3. Conclusion Drawn; After the researcher presents the data, the next step is to draw conclusions from the data that has been presented. Conclusions were also verified during the study. In simple terms, the meanings that arise must be tested for their truthfulness, strength, and compatibility, which is their validity. If this is not the case, what we have is an interesting ideal about something that is happening and its truth and power are unclear.

Data Type

The type of data used in this thesis research is secondary data which is a variety of information that has existed previously and deliberately collected by the researcher that is used to complete the research data needs. The secondary data in this study consists of reports on the realization of expenditures of the Immigration Office at the DKI Jakarta Regional Office, DIPA satker, regulatory documents that are the legal basis for the implementation of the central government budget and reports related to the implementation of the central government budget. The report document on the realization of task force expenditure comes from the State General Cash Accounting System managed by the Jakarta Regional Office of the Ministry of Law and Human Rights. The secondary data source comes from the Jakarta Regional Office of the Ministry of Law and Human Rights.

Data Processing and Analysis

The data processing in this study is qualitative, which has the meaning of a research method that refers to the legal norms contained in laws and regulations. Moleong (2007) defines qualitative analysis as "research that intends to understand the phenomena of what the research subject experiences, e.g. behavior, motivational perceptions, actions, etc., holistically and by way of description in the form of words and language, in a special natural context and by utilizing various natural methods. Qualitative research data analysis tends to inductively obtain abstractions from the overall data obtained.

RESULT AND DISCUSSION

Implementation in the Granting of a Limited Stay Visa for Foreign Investment in a Business Law Perspective

1. Implementation of laws and regulations on the granting of limited stay visas

a. Law No. 13 of 2003 concerning Manpower

Prior to the birth of Law Number 13 of 2003 concerning Manpower (UUK), the use of foreign workers in Indonesia was regulated in Law Number 3 of 1958 concerning the Placement of Foreign Workers (UUPTKA). In the process, the regulation regarding the use of foreign labor is no longer regulated in a separate law, but is already part of the compilation in the new Labor Law. In the Manpower Law, the regulation on the use of foreign workers (TKA) is contained in Chapter VIII, Articles 42 to 49.

These arrangements start from the obligation of employers who use TKA to obtain written permission; have a plan for the use of TKA that contains the reason, type of position and period of use of TKA; the obligation to appoint Indonesian workers as foreign worker assistants; to the obligation to repatriate foreign workers to their country of origin after the end of the employment relationship.

The Labor Law affirms that any employer is prohibited from hiring foreigners without written permission from the Minister. The definition of Foreign Workers is also narrowed, namely foreign citizens holding visas with the intention of working in Indonesian territory. In this provision, it is reaffirmed that every employer that hires foreign workers must have written permission from the Minister or appointed official. To provide wider employment opportunities to Indonesian workers (TKI), the government restricts the use of foreign workers and conducts supervision. In this context, the Government issued a number of legal instruments ranging from licensing, health protection guarantees to supervision. A number of regulations ordered by the Law include

- 1) Ministerial Decree on Certain Positions and Certain Time (Article 42 paragraph (5))
- 2) Ministerial Decree on the Ratification of the Plan for the Use of Foreign Workers (Article 43 paragraph (4))
- 3) Ministerial Decree on Positions and Competency Standards (Article 44 paragraph (2))
- 4) Ministerial Decree on Certain Positions Prohibited by Foreign Workers (Article 46 paragraph (2))
- 5) Ministerial Decree on Certain Positions in Educational Institutions Exempt from Compensation Payment (Article 47 paragraph (3))
- 6) Government Regulation on the Amount of Compensation and Its Use (Article 47 paragraph 4)
- 7) Presidential Decree on the Use of Foreign Labor and the Implementation of Education and Training of Companion Workers (Article 49).

Furthermore, it was explained that to meet the needs of the national job market, especially in filling the gaps in expertise and competencies in certain fields that cannot be covered by Indonesian workers, foreign workers can be employed in Indonesia as long as they are in employment relationships for certain positions and certain times. Hiring foreign workers can be done by any party in accordance with the provisions except for individual employers.

Every employer that employs foreign workers must have written permission from the minister or appointed official except for representatives of foreign countries that employ foreign workers as diplomatic and consular employees. Provisions regarding certain positions and certain times for foreign workers are stipulated by the Ministerial Decree, namely

Ministerial Decree Number: KEP-173/MEN/2000 concerning the Period of Permit to Employ Immigrant Foreign Citizens.

b. Law Number 6 of 2011 concerning Immigration

Supervision of Foreigners is not only carried out at the time of their entry, but also during their stay in Indonesian Territory, including their activities. Immigration Supervision includes the enforcement of Immigration laws, both administrative and criminal in Immigration. Therefore, it is also necessary to regulate the Immigration PPNS which carries out special duties and authorities based on this Law. Immigration crimes are special criminal acts so that formal law and material law are different from general criminal law, for example there is a special minimum penalty.

The aspect of service and supervision is also inseparable from the geography of the Indonesian Territory which consists of islands that have a close distance, even directly adjacent to neighboring countries, where the implementation of the Immigration Function along the border line is the authority of immigration agencies. At certain places along the border line there is traditional traffic in and out of Indonesian citizens and neighboring citizens. In order to improve services and facilitate supervision, cross-border agreements can be arranged and efforts are made to expand the Immigration Checkpoint.

Article 48 paragraph (1) of Law No. 6 of 2011 concerning Immigration states that:

- 1) Every foreigner who is in Indonesian territory is required to have a Residence Permit.
- 2) Residence Permit is granted to Foreigners according to the Visa they have.
- 3) Residence Permit as intended in paragraph (1) consists of:
 - a) Diplomatic Residence Permit;
 - b) Official Residence Permit;
 - c) Residence permit visit;
 - d) Limited Residence Permit; and
 - e) Permanent Residence Permit.
- 4) The Minister has the authority to prohibit Foreigners who have been granted a Residence Permit from being in certain areas in Indonesian Territory.
- 5) For Foreigners who are undergoing detention for the purpose of investigation, prosecution, and examination at court hearings or are serving a prison sentence or imprisonment in a correctional institution, while their residence permit has expired, the Foreigner is not subject to the obligations as intended in paragraph (1).

Thus, it can be avoided for people to enter or leave Indonesian territory outside the Immigration Checkpoint. The national interest is the interest of all Indonesian people, so the supervision of foreigners also requires the participation of the public to report foreigners who are known or suspected of being in Indonesian territory illegally or abusing permits in the field of Immigration. To increase public participation, efforts need to be made to increase public legal awareness.

Based on a selective policy that upholds the value of human rights, the entry of Foreigners into Indonesian Territory is regulated, as well as for Foreigners who obtain a Residence Permit in Indonesian Territory must be in accordance with their purpose and purpose of being in Indonesia. Based on the policy in question and in order to protect national interests, only foreigners who provide benefits and do not endanger public security and order are allowed to enter and be in Indonesian territory.

c. Ministerial Regulation Number PER.02/MEN/III/2008 concerning Procedures for the Use of Foreign Workers

This Ministerial Regulation was issued in the context of implementing Article 42 paragraph (1) of the Law. With the issuance of Ministerial Regulation Number PER.02/MEN/III/2008 concerning Procedures for the Use of Foreign Workers, several previous regulations are related to the implementation of Article 42 paragraph (1) of Law Number 13 of 2003 concerning Manpower, namely, "Decree of the Minister of Manpower and Transmigration Number KEP.228/MEN/2003 concerning Procedures for the Ratification of the Plan for the Use of Foreign Workers; Decree of the Minister of Manpower and Transmigration Number KEP.20/MEN/III/2004 concerning Procedures for Obtaining Permits to Employ Foreign Workers, Decree of the Minister of Manpower and Transmigration Number KEP.21/MEN/III/2004 concerning the Use of Foreign Workers as Singing/Karaoke Guides, Regulation of the Minister of Manpower and Transmigration Number PER.07/MEN/III/2006 concerning Simplification of Procedures for Obtaining Permits to Employ Foreign Workers (IMTA), Regulation of the Minister of Manpower and Transmigration Number PER.15/MEN/IV/2006 concerning Amendments to the Regulation of the Minister of Manpower and Transmigration Number PER.07/MEN/III/2006 concerning Simplification of the Procedure for Obtaining Permits to Employ Foreign Workers (IMTA), Regulation of the Minister of Manpower and Transmigration Number PER.34/MEN/III/2006 concerning Provisions for the Granting of Permits to Employ Foreign Workers (IMTA) to Employers Who Employ Foreign Workers in the Position of Directors or Commissioner, revoked and declared invalid.

In addition to having a permit to hire foreign workers, previously employers must have a Foreign Worker Use Plan (RPTKA) that is authorized by the Minister or appointed officials. Article 3 states that "employers who will hire foreign workers must have an RPTKA" which is used as the basis for obtaining a Foreign Worker Employment Permit (IMTA). To obtain the ratification of the RPTKA, the employer of the foreign worker must submit an application in writing with the reason for the use of the foreign worker by attaching:

- 1) Completed RPTKA form;
- 2) Business license from an authorized agency;
- 3) Deed of establishment as a legal entity that has been authorized by an authorized official;
- 4) Information of the company's domicile from the local government;
- 5) Chart of the company's organizational structure;
- 6) Letter of appointment of TKI as an assistant to the employed TKA;
- 7) Copy of proof of mandatory employment report that is still valid based on Law Number 7 of 1981 concerning Mandatory Employment Report in the company; and
- 8) Recommendations for positions to be occupied by foreign workers from certain agencies if needed

The RPTKA form as referred to in letter a contains:

- 1) Identity of the TKA employer;
- 2) The position and/or position of the TKA in the organizational chart structure of the company concerned;
- 3) The amount of wages of foreign workers to be paid;
- 4) Number of TKA;

- 5) The work location of the TKA;
- 6) The period of use of TKA;
- 7) Appointment of Indonesian citizen workers as companions for employed foreign workers; and
- 8) Indonesia's workforce education and training program plan

In the event that the results of the assessment of the feasibility of the RPTKA application are in accordance with the established procedures, the Director General or Director must issue a decision on the ratification of the RPTKA. The issuance of the decision on the ratification of the RPTKA is carried out by the Director General for applications for the use of TKA by 50 (fifty) people or more; and the Director for applications for the use of foreign workers who are less than 50 (fifty) people. The decision of the ratification of this RPTKA contains:

- 1) Reasons for using TKA;
- 2) The position and/or position of the TKA in the organizational structure of the company concerned;
- 3) The amount of wages for foreign workers;
- 4) Number of TKA;
- 5) The work location of the TKA;
- 6) The period of use of TKA;
- 7) The number of TKI appointed as TKA companions; and
- 8) The number of TKI employed.

A Permit to Use Foreign Workers (IMTA) is granted by the Director of Procurement and Use of Labor of the Ministry of Manpower and Transmigration to foreign labor employers, by first applying for a visa recommendation (TA-01) by attaching:

- 1) A copy of the RPTKA Ratification Decree;
- 2) Copy of passport of the foreign worker to be employed;
- 3) A list of the curriculum vitae of the foreign workers to be employed;
- 4) Copy of the diploma and/or description of the work experience of the foreign worker to be employed;
- 5) Copy of the letter of appointment of the accompanying worker; and
- 6) Pass a color photo size of 4 x 6 cm as many as 1 (one) sheet.

In the event that the Directorate General of Immigration has granted the visa application to be able to work on behalf of the migrant worker concerned and issued a notification letter of approval for the granting of a visa, the employer of the migrant worker submits an IMTA application by attaching (Article 24):

- 1) copy of the draft of the employment agreement;
- 2) proof of payment of compensation funds for the use of foreign workers through banks appointed by the Minister;
- 3) copy of the insurance policy;
- 4) a copy of the notification letter of approval for the granting of a visa; and
- 5) 4x6 color photos of 2 (two) sheets

Employers of foreign workers are obliged to report the use of foreign workers and foreign worker assistants in the company periodically every 6 (six) months to the Director or Governor or Regent/Mayor with a copy to the Director General. The Director or Governor or

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Regent/Mayor reports the IMTA which is issued periodically every 3 (three) months to the Minister with a copy to the Director General.

d. Regulation of the Minister of Manpower Number 16 of 2015 concerning Procedures for the Use of Foreign Workers

In order to improve control and in order to improve services and protection for Foreign Workers in Indonesia, the government is now issuing a revised regulation regarding the use of Foreign Workers. The amendment rules are the Regulation of the Minister of Manpower Number 16 of 2015 concerning Procedures for the Use of Foreign Workers. The regulation, which is the implementation of Article 42 paragraph (1), Article 43 paragraph (4), Article 44 paragraph (2) of Law Number 13 of 2003, is an amendment to the previous regulation, namely the Regulation of the Minister of Manpower and Transmigration Number 12 of 2013 concerning Procedures for the Use of Foreign Workers, because it is no longer in accordance with the development of employment.

Employers of foreign workers include Government Agencies, International Agencies, representatives of foreign countries, International Organizations, Foreign Trade Representative Offices, foreign news representative offices, foreign private companies, foreign business entities registered with authorized agencies, legal entities established under Indonesian law in the form of limited liability companies or foundations, social, religious, educational and cultural institutions and impresariat businesses. For the substance of the regulation that differs from the previous regulation, it is related to the obligation of employers of foreign workers to absorb at least 10 (ten) Indonesian workers for the use of 1 (one) foreign workers, applications for RPTKA and IMTA can be done online, IMTA extensions carried out by provincial or district/city PTSP must get recommendations from provincial or district/city offices, employers must attach an NPWP, foreign workers who have worked for more than 6 (six) months must have an NPWP and National Social Security membership, the validity period of IMTA for foreign workers who hold positions as members of the board of directors, members of commissioners or members of the trustees, members of the board of directors and members of the supervisory board for a maximum of 2 years and can be extended.

The addition of provisions in this regulation that IMTA can be used as a basis for issuing visa approvals, granting and extending ITAS, transferring the status of a visit residence permit (ITK) to ITAS, transferring the status of ITAS to ITAP (permanent residence permit) and extending ITAP, as well as IMTA for Waters is used as a basis for issuing sailing permits from agencies responsible for Transportation.

In addition, this new regulation also regulates permits to employ foreign workers for temporary work, emergency and urgent work, special economic zones and free port and free trade areas, water areas, nyayi/karaoke guides, permanent residence permit holders, while the payment of compensation funds for the use of Foreign Workers (DKP-TKA) of US\$ 100 (one hundred) US dollars per position/month for each foreign worker paid in advance must be converted first to rupiah.

2. The Impact of Granting Limited Stay Visas for Foreign Workers in Indonesia

Employment development as an integral part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia, is carried out in the context of the development of the whole of Indonesian people and the development of Indonesian society as a whole to increase the dignity, dignity, and self-esteem of the workforce and to realize a

prosperous, just, prosperous, and equitable society, both material and spiritual. Employment development must be regulated in such a way that basic rights and protections for workers and workers are fulfilled and at the same time can create conditions conducive to the development of the business world.

Employment development has many dimensions and interconnectedness. The relationship is not only with the interests of the workforce during, before and after the working period but also with the interests of employers, the government, and the community. For this reason, a comprehensive and comprehensive arrangement is needed, including human resource development, increasing the productivity and competitiveness of the Indonesian workforce, efforts to expand employment opportunities, labor placement services, and fostering industrial relations.

Foreign Direct Investment (FDI) is one of the important features of an increasingly globalized economic system. It starts when a company from one country invests its capital in the long term to a company in another country. In this way, companies in the country of origin (commonly called 'home country') can control companies in the destination country of investment (commonly called 'host country') either partially or fully.

The trick is with the investor buying an existing company abroad or providing capital to build a new company there or buying at least 10% of its shares. Typically, Foreign Direct Investment (FDI) is related to productive asset investments, such as the purchase or construction of a factory, the purchase of land, equipment or buildings or the construction of new equipment or buildings carried out by foreign companies. Reinvestment from the company's income and the provision of short- and long-term loans between the parent company and its subsidiaries or affiliates are also categorized as direct investments. Now new patterns in Foreign Direct Investment (FDI) are starting to emerge such as licensing the use of high technology.

Most of this FDI is wholly or almost wholly owned by a company. This includes jointly owned companies and strategic alliances with local companies. Joint ventures involving three or more parties are usually called syndications and are usually formed for specific projects such as large-scale construction or public works projects that involve and require different types of expertise and resources.

The Foreign Investment Law was issued to attract foreign investment to build the national economy. In Indonesia, it is the authority of the Investment Coordinating Board (BKPM) to provide approval and permits for foreign direct investment. In the last decade, foreign investors have been reluctant to invest their capital in Indonesia due to unstable economic and political conditions. The Investment Coordinating Board (BKPM) yesterday released investment data in Indonesia. In the data, there is an interesting achievement, namely a surge in the realization of Chinese investment by 400 percent compared to the same period the previous year. This is a positive note because China usually only expresses great interest, without being accompanied by realization.

Multinational companies that want to suck up natural resources to dominate markets (both existing and profitable and emerging ones) and reduce production costs by hiring cheap labor in developing countries, are usually these foreign investors. Examples of this kind of 'classic' FDI are for example Canadian mining companies opening mines in Indonesia or Malaysian palm oil companies taking over oil palm plantations in Indonesia.

Cargill, Exxon, BP, Heidelberg Cement, Newmont, Rio Tinto and Freeport McMoRan, and INCO all have direct investments in Indonesia. However, most FDI in Indonesia is in the manufacturing sector in Java, not natural resources in the regions. One of the important aspects of Foreign Direct Investment (FDI) is that the financier can control or at least have an important influence on the management and production of companies abroad. This is different from portfolios or indirect investments, where foreign investors buy shares of local companies but do not control them directly. Usually, FDI is also a long-term commitment. That is why it is considered more valuable for a country than other types of investments that can be withdrawn just like that when there are signs of problems. Realizing the reality that so far Indonesia still needs foreign investors, as well as the influence of the globalization of civilization where Indonesia as a member country of the World Trade Organization (WTO) must open opportunities for the entry of foreign workers. To anticipate this, it is hoped that there will be a completeness of regulations that regulate the requirements for foreign workers, as well as securing the use of foreign workers. The regulation must regulate the basic aspects and forms of regulations that regulate not only at the Ministerial level, with the aim of using foreign workers selectively while still prioritizing migrant workers.

Therefore, in hiring foreign workers, it is carried out through very strict mechanisms and procedures, especially by making it mandatory for companies or corporations that use foreign workers to work in Indonesia by making a plan for the use of foreign workers (RPTKA) as stipulated in Ministerial Regulation Number PER.02/MEN/III/2008 concerning Procedures for the Use of Foreign Workers.

In contrast to the Labor Law which uses the term foreign workers against foreign nationals who hold visas with the intention of working in the territory of the Unitary State of the Republic of Indonesia (NKRI), in Presidential Decree Number 75 of 1995 concerning the Use of Immigrant Foreign Citizen Labor (TKWNAP), the term foreign immigrant worker is used, namely foreign citizen workers who have a limited visa or a limited stay permit or a permanent permit for the purpose of working (doing work) from within the territory of the Republic of Indonesia. The term TKWNAP is considered inappropriate, because a foreign worker not only comes (as an immigrant) from outside the territory of the Republic of Indonesia, but there is a possibility that a foreign worker was born and resides in Indonesia because of the immigration status of his parents (based on the principle of *ius soli* or *ius sanguinis*).

Furthermore, it was explained that to meet the needs of the national job market, especially in filling the gaps in skills and competencies in certain fields that cannot be covered by Indonesian workers, foreign workers can be employed in Indonesia as long as they are in employment relationships for a certain position and a certain time.

Hiring foreign workers can be done by any party in accordance with the provisions except for individual employers. Every employer that employs foreign workers must have written permission from the minister or appointed official except for representatives of foreign countries that employ foreign workers as diplomatic and consular employees. Provisions regarding certain positions and certain times for foreign workers are stipulated by the Ministerial Decree, namely Ministerial Decree Number: KEP-173/MEN/2000 concerning the Period of Permit to Employ Immigrant Foreign Citizens. These closed list positions must be considered by the employer before applying for the use of foreign workers.

Associated with the theory of authority by J.B.J.M Ten Berge as quoted by Philipus M. Hadjon, in addition to having to obey the provisions about the position, it must also pay attention to the applicable competency standards. Provisions on positions and competency standards are delegated in the form of a Ministerial Decree. However, in practice, this delegative and attributive authority has not used rules in accordance with the Labor Law. Since the amendment of the 1945 Constitution, the principle of regional autonomy has gained its position in Article 18 concerning local government and the development of a decentralistic system of government through Law Number 32 of 2004 concerning Regional Government. The five main things that are the authority of the Center following the enactment of regional autonomy are foreign affairs, defense and security, monetary, judicial, and fiscal. Employment issues also became the scope of the authority of the local government, by placing them in the organizational structure and work procedures in the structure of the "service".

Based on Ministerial Regulation Number PER.02/MEN/III/2008 concerning Procedures for the Use of Foreign Workers, the application to use foreign workers for the first time is submitted to the Minister of Manpower and Transmigration, then for extension it is submitted and granted by the Director or Governor/Mayor. Based on the previous description, several conclusions can be drawn as follows: the provisions regarding foreign workers in Indonesia with the issuance of Law Number 13 of 2003 concerning Manpower, are no longer regulated in a separate legislation on the placement of foreign workers, but are part of the compilation in the new Manpower Law.

However, to be able to implement the new law, there are still many obstacles, especially in promoting investment because a number of regulations that complement the smooth operation of the program for the use of foreign workers are not ready, so far only Ministerial Regulation Number PER.02/MEN/III/2008 concerning Procedures for the Use of Foreign Workers that already exist in addition to 3 (three) other Permenakers to fill the legal void with the not yet issued of the necessary regulations, the regulations that are while still in effect.

3. Handling the Impact of Granting Limited Stay Visas for Foreign Workers

In the implementation of Preventive Supervision activities by using accurate information. Faulty data from oversight can cause organizations to take incorrect corrective actions or can lead to issues that don't actually exist. The supervision carried out by the Employment Supervision Division will first request data to the Placement and Expansion of Job Opportunities Division, later from the data that has been obtained, the Labor Supervision Division will check the completeness of administrative documents for Foreign Workers working in Indonesia.

From the above statement, the information obtained from the supervisory team that supervises foreign workers and those who check the completeness of licensing documents always provides accurate information to the head of the Manpower Supervision Division. The information provided by the supervisory team that carries out direct supervision of companies that use Foreign Workers, has provided accurate information and obtained that there were no violations against Foreign Workers working in the Makassar City area. As conveyed by the Head of the Entrepreneur Work Organization Development Section and the requirements of the Labor Department of the DKI Jakarta Provincial Manpower and Transmigration. Every inspection of licensing documents carried out is carried out in accordance with applicable regulations. The supervision team that provides information in accordance with data in the field

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that every month meets together to follow up on the implementation of supervision activities related to Foreign Workers.

However, several reports are given every month at the DKI Jakarta Provincial Manpower and Transmigration Office. The number of foreign workers employed in DKI Jakarta then reports their foreign workers to the Manpower and Transmigration Office and followed by their files. This Preventive Supervision is also carried out by carrying out supervision with pre-planned guidelines. In this preventive supervision, it focuses on the supervision of foreign worker licensing. In this case, the local government must plan the implementation of supervision of foreign workers in Jakarta so that supervision runs objectively and comprehensively.

In accordance with the Work Plan made by the Manpower and Transmigration Office, it has a target of being able to supervise at least 2 companies in one month. In this supervision, the Manpower and Transmigration Office verifies the licensing of Foreign Workers in each company. From the work plan that has been made, the Manpower Division always checks the completeness of licensing documents such as the completeness of the documents for the use of foreign workers (RPTKA), permits to employ foreign workers (IMTA) and limited stay permits (ITAS) for foreign workers who will work in the city of DKI Jakarta and if the foreign workers do not have the completeness of the licensing documents that have been determined, then the workforce foreigners have not been allowed to work in the DKI Jakarta area.

The planning for the implementation of supervision of Foreign Workers by the DKI Jakarta Manpower and Transmigration Office is carried out in two ways as follows:

- a. Routine Supervision with Administrative Checks
- b. Plan the implementation of supervision in an open and closed manner.

After supervising Foreign Workers, both administratively and directly in the field, the Provincial Manpower and Transmigration Office through the field of labor supervision always conducts joint evaluation meetings with agencies related to Foreign Workers. In conducting supervision of Foreign Workers, it must be in accordance with the guidelines that have been planned so that the supervision carried out runs objectively, after carrying out supervision, there is an evaluation meeting conducted by agencies related to Foreign Workers and the results of the evaluation meeting if there are irregularities carried out, strict sanctions will be given, including a work ban imposed on Workers Foreigners until they meet all licensing documents and will be expelled from the company they are working for and will get fines related to the violations committed.

After obtaining the IMTA, other documents will be made, such as Limited Stay Permit (ITAS), Certificate of Residence (SKTT), Reporting Certificate (STM) if the foreign worker resides in DKI Jakarta. If the company or foreign workers do not have the official documents described above, they will be subject to sanctions in accordance with the applicable laws and regulations.

After preventive supervision as described above, then repressive supervision is carried out in a supervisory system that must be centered on the company in areas where deviations from standards often occur that will get fatal damage. From the sub-focus, the researcher assesses the centralized aspect of strategic monitoring points, meaning that supervision activities are concentrated in locations where there are irregularities, where supervision must prioritize areas that can be improved or problems. In supervising Foreign Workers in

companies, supervisors must focus more on companies that are suspected of having Illegal Foreign Workers or whose employment contracts have expired.

Based on the description above, it is associated with the theory of general principles of good governance (AAUPB) by Jazim Hamidi (2016) which concludes that:

- a. The General Principles of Good Governance are ethical values that live and develop in the administrative legal environment
- b. The General Principles of Good Government function as a guide for State Administration Officials in carrying out their functions, as a test tool for Administrative Judges in assessing the actions of State Administration (which is based on determination/beschikking), and as a basis for filing a lawsuit on behalf of the plaintiff
- c. Most of the General Principles of Good Government are still unwritten, abstract, and can be explored in the practical nature of life in society
- d. Some of the other principles have become written legal rules and are scattered in various positive legal regulations. Although part of the principle has been changed to a written legal rule, it remains as a legal basis

For state administration, it is useful as a guideline in interpreting and applying the provisions of laws and regulations that are vague, vague, or unclear. At the same time, it limits and avoids the possibility of state administration using *freies ermesen* which deviates far from the provisions of the law.

Immigration Actions or Administrative Actions outside the Criminal Justice System, and *pro yustitia* law enforcement aspects (judicial process) that are included in the Criminal Justice System. All immigration laws and regulations are basically included in the family of Administrative Law, therefore Penalties in the Immigration Law can be justified (Administrative Penal Law), in general usually penal sanctions in Administrative Law are light, but in reality criminal sanctions in the Immigration Law because they contain the threat of criminal sanctions in prison and are mostly classified as criminal offenses that are considered serious.

Some of the considerations that cause criminal sanctions in the Immigration Law are included in the Administrative Law where the criminal threat is classified as severe, not as light as others, namely:

- a. Immigration is closely related to the enforcement of state sovereignty, the provisions of immigration are part of the instrument of enforcing State Sovereignty.
- b. Immigration is closely related to the State Security System, the immigration aspect is directly related to intelligence activities, support for law enforcement in general, for example, the examination of criminals and so on.
- c. Immigration is related to the aspect of achieving community welfare, through immigration services to tourists, foreign investors and other activities that have a direct or indirect impact in the context of National Development.
- d. Immigration is related to international relations both in the form of services and law enforcement or in the form of bilateral and international cooperation.
- e. Immigration is directly related to efforts to combat organized crime with an international scope, in accordance with UN conventions, including in terms of handling refugees and asylum seekers.

- f. Immigration is concerned with universal demands, of civil rights and human rights that are already universally applicable.

Based on the above, the consideration of criminal sanctions in the Immigration Law, which is classified as a family of administrative law, is something special compared to other similar laws and regulations in administrative law. Supervision of foreigners basically includes administrative supervision, which includes the collection and processing of data on the entry and exit of foreigners in Indonesian territory.

Then, operational supervision, the implementation of supervision of foreigners in Indonesian territory is carried out in a coordinated manner. There are two things that are the target of supervision of foreigners in Indonesia, namely supervision of their existence (immigratoir) and supervision of the activities of foreigners while in Indonesia.

The aspect of supervision of foreign activities requires a coordinated activity between agencies in terms of the implementation of supervision. The Minister of Justice as the coordinator at the Central Level (National) together with other relevant government agencies or agencies as implementers of coordinated supervision of foreigners called the Coordination of Supervision of Foreigners (SIPORA). Basically, the supervision of foreigners is the responsibility of the Minister of Justice, in this case the Immigration Officer as the implementing operator. The implementation mechanism must be carried out by coordinating with government agencies or agencies whose fields of duty concern foreigners, such agencies or agencies include the Ministry of Foreign Affairs, Ministry of Home Affairs, Department of Defense and Security, Ministry of Manpower, Attorney General's Office, State Intelligence Agency and National Police of the Republic of Indonesia. The Coordination of Supervision of Foreigners (SIPORA) is carried out in an integrated manner, and SIPORA is formed at the Central level, at the Provincial level and at the regional level.

Meanwhile, immigration law enforcement officers determined by law are Immigration Officials, which in this case is also an Immigration Civil Servant Investigator (PPNS Immigration). In the process, immigration law enforcement starts from the starting point of immigration matters which includes supervision of the traffic of people entering and leaving the territory of the Republic of Indonesia and supervision of foreigners in Indonesian territory.

The law enforcement instruments in terms of monitoring the traffic of people between countries are:

- a. Refusal to enter is carried out for people who are subject to deterrence, especially foreigners, and can also apply to Indonesian citizens (who are subject to deterrence).
- b. Refusal to go abroad for people affected by prevention applies to Indonesians and foreigners.
- c. Immigration proceedings are carried out if at the time of arrival and departure checks, people are found to have committed violations of immigration law, for example, fake visas, immigration permits that no longer exist, fake passports (including the meaning of falsification either partially or completely of a document)

The three things mentioned above are an initial process of immigration law enforcement efforts when the inspection is carried out by Immigration Officials at the Immigration Checkpoint. In the context of the supervision of foreigners related to aspects of the existence and supervision and activities of foreigners, each Immigration Office carries out monitoring

activities for foreigners in their work area, both supervision from the aspect of existence and from the aspect of activities.

4. Problem Analysis

Residence permits granted by a State to foreigners are a form of State sovereignty as a legal State that has full authority to determine and regulate the limits for foreigners to reside in a State. The permit is not a foreigner's thing, but a privilege given by the State to a foreigner. In addition, the restrictions on residence permits are to protect the interests of the nation from social, cultural, economic, employment, security and order aspects.

The researcher can conclude that the supervision is carried out according to the work plan schedule, but the supervision carried out in Makassar City on Foreign Workers focuses on administrative violations committed by companies that are found to violate the administration of Foreign Workers that cause the foreign workers to become illegal. If there is no information about the company that violates the predetermined procedures, then the supervisor only monitors or checks the administrative data in each other agency and checks directly to the companies to which the agency is targeted. From some of the explanations that have been presented, the researcher can conclude that supervision is focused on strategic supervision points and focuses on companies committing labor-related violations.

From the above statement, in carrying out supervision, the officers must also be careful in supervising Foreign Workers and be able to detect the possibilities of storage that will occur to Foreign Workers and to companies that provide work to the Foreign Workers. The Manpower and Transmigration Office will give strict sanctions to Foreign Workers who are found to have committed irregularities such as not being able to show a Plan for the Use of Foreign Workers (RPTKA) and a Permit to Employ a Permit to Employ Foreign Workers (IMTA).

CONCLUSION

The research findings conclude that the relationship between business law and immigration law in relation to foreign investment in Indonesia is regulated under Law Number 11 of 2020 concerning Job Creation, which includes provisions on immigration, employment, and investment. The regulation of foreign workers (TKA) is intended to support national economic growth, enhance competitiveness, and encourage the transfer of knowledge and technology to ensure investment sustainability. The issuance of Limited-Stay Visas to foreign investors constitutes an exercise of state sovereignty in regulating the presence of foreigners while safeguarding national interests in social, cultural, economic, employment, security, and public order aspects.

Therefore, supervision of foreign worker utilization must be conducted optimally by the relevant authorities through verification of applicable licensing documents. Based on these findings, it is recommended that immigration policies and systems be updated, accompanied by improvements in law enforcement mechanisms grounded in the principles of good governance. In addition, the establishment of a special task force involving immigration offices and manpower agencies is suggested to enhance the effectiveness, coordination, and supervision of foreign worker utilization, as well as corporate compliance with applicable licensing regulations.

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