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Implementation Of Immigration Policy On Foreign Workers During The Covid-19 Pandemic

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Abstract

As there is foreign worker (TKA), it is also a foreign investment with the aim for the welfare of the people in Indonesia. This is stated in Law No. 13 of 2003 related to Employment which provides labor protection where the basic rights are guaranteed by the company and there is no discrimination between workers. With the impact of the covid pandemic in Indonesia, of course, Immigration becomes an important role in dealing with the pandemic by limiting the movement related to people traffic in the territory of Indonesia both for foreigners with tourist destinations and up to foreign workers, surely is a major change and shift to the order of life both in terms of health, social and economic. This research uses normative type research, which is included in deductive research where it starts from an analysis of provisions related to laws and regulations that regulate the issue of immigration implementation at the time of pandemic. The focus of this research is on Foreign Workers (TKA) who wants to enter the territory of Indonesia. The data used is secondary data generated through the assessment of the literature related to this study.

Key words: Foreign Worker; Immigration Policy; Government.

A. Introduction

Lately everyone in various countries has been horrified by the presence of a dangerous virus that threatens human's safety, namely corona virus or Covid-19. The Coronavirus was discovered on November 17, 2019 and was first discovered in Wuhan, China.¹ This outbreak has become a threat to the international community due to its rapid transmission through humans. This coronavirus also has many negative effects to the whole world due to the limitations given by each country to shrink the case of Covid-19. Each country has its own policy to protect its country from being exposed to the Covid-19 virus outbreak that has been worldwide. Many do not expect this covid-19 outbreak can spread across various countries, not only that but the national interests, ideologies, and economy of each country are barely running due to this insurmountable outbreak. The existence of work that appeared in the 1980s by Barry Buzzan made a starting point related to the development of security studies. Buzzan introduced that there are threats beyond armed threats,

¹Muhammad Sukardi, "Ternyata COVID-19 Pertama Kali Muncul Pada 17 November 2019, Bukan Desember," *Jum'at 13 Maret 2020 10:24 WIB*, last modified 2020, <https://lifestyle.okezone.com/read/2020/03/13/481/2182628/ternyata-covid-19-pertama-kali-muncul-pada-17-november-2019-bukan-desember>.

namely non-traditional threats. Covid 19 is a real threat that weakens the stability, the development and the security of the country. It's not just a physical invasion but we're at war with something invisible.

In terms of maintaining the security and sovereignty of a country, the Government of Indonesia also provides a special policy aimed at protecting the country and its people and to help reduce the case of covid-19. In accordance with the immigration function, the immigration of one of the related institutions has a great urgency related to the security and sovereignty of the country, especially when this outbreak is rampant in Indonesia. As we know that this virus can very quickly spread through humans. So it is necessary to suppress the number of spread, from this Covid-19 case the Indonesian government must limit every movement of people within the territory of Indonesia. Through immigration the government oversees every crossing related to foreign and Indonesian traffic. In this case, the immigration department is collaborating with other relevant government agencies to fight this very dangerous covid-19 virus. In doing this cooperation, it takes the firmness of each agency to provide its policies and regulations so that the goals and concerns of all Indonesian people can be carried out and resolved properly.

In accordance with the mandate of Law No. 6 of 2011, immigration serves in providing a service, existing law enforcement, securing the country and is a facilitator of development. Among the functions of immigration one of them is the security of the state which concerns state sovereignty. Public perspective on immigration is only to make a passport but thus immigration is not just making a passport, on the other hand immigration conducts a supervision at each crossing related to the entry and exit of someone in the territory of Indonesia. Based on Law No. 6 of 2011 in the first section is related to selective policies regulated in basically only useful foreigners can enter Indonesia, obey the applicable government regulations, do not endanger state security and have goals and needs while in Indonesia.² All these selective policies explain about the security of the country where the role of immigration is very important in maintaining the country's gate as a flow of people crossings in or out from the territory of Indonesia but whether the entry of the covid-19 outbreak as a non-traditional threat can be said to be the negligence of officers in maintaining the crossing of people entering the territory of Indonesia and how the supervision and readiness of officers in the time before the entry of the covid-19 outbreak is worth checking. But not necessarily the fault of officers alone the role of the government at that time also had a big part in making policies and regulations in preventing this pandemic outbreak, Whether at that time the government was ready to deal with the covid-19 outbreak that threatened the world while unpreparedness issued regulations that were considered slow in making decisions, making this frontline officer who guarded the crossing door of the Immigration Checks (TPI) is negligent in filtering people who enter the territory of Indonesia because of weak government regulations in terms of preventing the covid-19 outbreak to ban the entry of foreigners into Indonesian territory and apply residence permits in forced circumstances that have been previously regulated in Permenkumham Number 27 of 2014 article 86.

²<https://www.imigrasi.go.id/>.

B. Research Methods

This research uses normative type research, which is included in deductive research where it starts from an analysis of provisions related to laws and regulations that regulate the issue of immigration implementation at the time of pandemic. The focus of this research is on Foreign Workers (TKA) who wants to enter the territory of Indonesia. The data used is secondary data generated through the assessment of the literature related to this study.

C. Discussion

1. Immigration Policy In The Pandemic

Covid-19 has been stated by WHO as a pandemic, where the covid-19 virus can transmit to almost everyone worldwide. Due to the increasing number of cases every day, many countries out there are implementing lock down policies that means the country does not allow foreigners to enter or exit the country or by providing its own policy against restrictions on the movement of its people for the security of a country. Currently Indonesia has also implemented an emergency PPKM (Community Activity Restriction) policy. As a result of the enactment of each country's policies is considerable impact for each country, from social to economic impact. The impact that is felt by a country is the economic impact that can not be avoided anymore so the government must carry out its duties along with limiting every activity that can cause a gap to the increase in cases of the covid-19 virus but still have to pay attention to economic sustainability for the welfare of the people of the country. The impact that continues to arrive causes the Indonesian government to make many changes to the regulations that have been imposed, especially to government regulations regarding the Covid-19 virus.

In January 2020 the government saw that the increasing number of people exposed to the coronavirus. Therefore, the directorate general of immigration in this case increases a policy of limited closure of both flights and land borders to prevent the entry of the corona virus into Indonesian territory. But immigration itself last month made its technical decision on the policy. Until February, the government issued a policy in Permenkumham No.3 of 2020 regarding temporary terminations related to the granting of Visa-Free Visits (BVK) and visas for Chinese citizens who want to enter Indonesian territory. On February 28, the government issued Permenkumham Regulation No. 7 of 2020, which is about the termination of visa-free visits and visas on arrival (VoA) for foreigners who have lived and/or visited the People's Republic of China (PRC) in the span of two weeks before entering Indonesia.

Then in March the government re-issued Permenkumham No. 8 of 2020 by stopping BVK and VoA and implementing a policy of granting Forced State Residence Permits (ITKT) for foreigners who cannot return to their home countries where in the country they will visit implement the lockdown policy. In this case, for foreign nationals whose permit to stay for a visit, stay limited or stay permanently, the validity period has ended. The directorate general of immigration stipulates that the regulations in the granting of residence permits in forced circumstances are only valid for 30 days and can be extended. The reason for being granted a forced

residence permit is that the foreign citizens cannot return to his country because there are no conveyances that bring him back to his country. Then continued with government regulations again to make changes to regulations, namely issuing Permenkumham No. 11 of 2020 Temporary Ban on Foreigners Entering Indonesia in the same month as the government expressly prohibits full foreign citizens who will enter Indonesia. Then the government issued Permenkumham Number 11 of 2020 which has revoked Permenkumham Number 7 in 2020 and Permenkumham Number 8 of 2020 thus the government is firm in taking the decision to ban foreign citizens from entering Indonesia. But there are exceptions for foreigners who comply in article 2, namely foreigners who have a limited and permanent residence permit, visa holders and diplomatic service permits, medical and humanitarian personnel and transport crews and foreigners working in the national strategic field. The exception must follow health protocols in Indonesia and must be willing to quarantine within 14 days. Then a month later in April re-exited the policy of the director general of immigration SE Director General No. IMI-GR.01.01-2325 Temporary Ban on Foreigners Entering Indonesia where contained the rules prohibiting foreigners entering Indonesia, except for foreigners who have ITAS & ITAP, diplomatic visas and service visas, diplomatic and service residence permits, medical or humanitarian personnel, transport crews and workers of the National Strategic Project (PSN).

In May, the circular of the director general of immigration SE Director General No. IMI-GR.01.01-2493 Entry Permit for ITAS / ITAP Holders expired and in June the directorate general of immigration again issued a circular se Director General No. IMI-GR.01.01-0946 New Normal Procedures and Services with new normal service period where restrictions on service queue quotas and eazy passport service innovation one form of prevention of covid 19 and increase PNPB with the presence of Eazy Passport during this new normal. In an effort to minimize the spread of the Covid-19 virus, the Directorate General of Immigration issued Circular Letter Number: IMI-GR.01.01-2114 of 2020 related to restrictions on immigration services to reduce the number of virus spread in the scope of immigration offices. Limited service is related to the creation of passports that prioritize emergency needs, for example for sick people and other non-delayable interests and limit passport queue quotas at each immigration office. Furthermore, it provides socialization to the foreigners to not need to apply for a residence permit in a forced state if it has exceeded the limit of its residence permit, in accordance with Article 5 paragraph (6) letter b of PP Number 28 of 2019 concerning The Type and Rate on The Type of Non-Tax State Revenue in the Ministry of Law and Human Rights. Where WNA are free of charge are those who have been in Indonesia since February 5, 2020.

In August the directorate general of immigration issued a circular SE Director General No. IMI-GR.01.01-4049 On Shore Visa Extension Period ITKT where only Onshore Visa is opened and and has not yet opened its OFF Shore new normal service procedures and then returned 1 month later, namely September the government confirmed immigration policy in the New Normal period. Permenkumham No.26/2020 New Normal Visa and Residence Permit one of which is temporary termination of BVK and VoA, Visit visa and limited stay visa can be granted for certain purposes, Granting New Residence Permits for foreigners stranded in Indonesia (on-shore visa) as well as visa services (Off shore visa) for subjects of national economic

recovery and family unification in terms of humanitarian reasons, transport crew, and APEC business travel KPP, in this regulation Visa for tourist purposes is still not allowed. And finally in 2020 in October the directorate general again issued a circular se Director General No. IMI-1555. GR.01.01/2020 New Normal Visa and Residence Permit (15 Oct) Launching of Indonesian E-Visa (HDKD 27 Oct).

In July 2021 now with the high number of Covid-19 in Indonesia and continues to increase over time. The government officially implemented Permendagri Regulation No. 15 of 2021 on Emergency PPKM Jawa-Bali which was valid from July 3-20, 2021. The special government of the directorate general of immigration expressly issued an immigration policy, namely Permenkumham No. 27 of 2021 which revoked the previous Permenkumham, Permenkumham No. 26 of 2020 which before this regulation allowed foreign workers who were especially in national strategic projects. Then in the contents of Permenkumham No. 27 of 2021 there is a newness related to restrictions on foreigners entering Indonesia during PPKM, except foreigners:

- a) Owner of Diplomatic Visa or Service Visa;
- b) The owner of a diplomatic residence permit or official residence permit;
- c) The owner of a limited residence permit or permanent residence permit;
- d) Is a health or humanitarian personnel recommended by an agency handling covid 19
- e) Transport equipment crew

In this case previously Permenkumham No. 26 of 2020 listed one of them is TKA in PSN has permission to enter Indonesia but now the existence of Permenkumham No. 27 of 2021 is to ban TKA national strategic projects while, can be concluded on the last update on the immigration policy is to prohibit foreign workers both national strategic projects and foreign workers non national strategic projects during this PPKM period. With the latest Permenkumham No.27 policy, it is certainly very influential on the economy and national development, considering that TKA on national strategic projects is also very profitable for the country in terms of national development.

2. Foreign Workers (TKA) In The Pandemic

Migration is a transfer of people to another place where they have the goal to move residence within the period of time, they specify where it can be permanent or temporary. One of the migration phenomena that are often discussed lately is the phenomenon of migration related to TKA in Indonesia, especially TKA from China. In Law No. 13 of 2003, employment in Article 1 paragraph (13) defines TKA as a WNA that has a visa where it is in Indonesia to work.³ Launching from the online news portal, in 2020 the number of TKA in Indonesia reached 98,902 people dominated by TKA from China as many as 35,781 people (36.71%), then in the 2nd rank Japan 12,823 people, South Korea 9,097 people, India 7,356 people, Malaysia 4,816 people, Philipina 4,536 people, United States 2,596 people, Australia 2,540 people, UK 2,176

³Undang - Undang No 13 Tahun 2003 Tentang Ketenagakerjaan, 2003.

people, Singapore 1,994 people and TKA from other countries as many as 15,187 people.⁴

The number of foreign workers from China in Indonesia is caused by increased investment by China in Indonesia which then leads to an increase in the number of TKA from China. Quoted from merdeka.com, the Indonesian Institute of Sciences (LIPI) has recorded an increase in China's stock planting in Indonesia where in 2016, China is domiciled as number 3 of the largest investor with its investment value USD 2,665 million (9% of total foreign investment in Indonesia) where number one is occupied by Singapore as much as USD 9,179 (32%) and number two by Japan at USD 5,401 (19%).⁵ THE INCREASING VALUE OF INVESTMENT BY China makes also increase TKA from China in Indonesia, the Chinese government sends its workforce to Indonesia to overcome problems related to the growing number of workers in China.

The existence of TKA located in Indonesia can indirectly make technology investment (Transfer of Technology) and transfer of expertise (Transfer of Skill) to TKI, and expansion of job opportunities. Therefore, with the TKA is a foreign investment with the aim for the welfare of the people in Indonesia. This is stated in Law No. 13 of 2003 on Employment, which is to provide a protection to workers where their basic rights have been guaranteed, equality of workers so that there is no discriminatory behavior for it to be realized worker welfare and sustainability but still pay attention to business continuity. In its application, TKA entering the territory of Indonesia must also meet the existing requirements in accordance with the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 12 of 2013 concerning the Procedures for the Use of Foreign Labor article 26, which states:⁶

- a) TKA who works for an employer must be qualified, among others:
 - 1) Have an appropriate education on the terms of the position to be applied to
 - 2) have skills that are proven by certificates of competence or linear work experience with the position he has at least 5 years
 - 3) Willing to make a statement to transfer the expertise he has to TKI companion
 - 4) Communicate with Indonesian language
- b) The provisions in paragraph (1) do not apply to the positions of Commissioners, Board of Directors, impresariat service businesses, and jobs where they are temporary.
- c) TKI companion referred to paragraph (1) letter c must have an education in accordance with the position to be applied by TKA.

With the covid pandemic in Indonesia, Immigration becomes an important role in dealing with the pandemic by limiting the movement or entry of foreigners into

⁴“Jumlah Tenaga Kerja Asing Di Indonesia 98.902, TKA China Terbesar,” Konstan.Co.Id Selasa, 12 Mei 2020 / 16:59 WIB, last modified 2020, <https://nasional.kontan.co.id/news/jumlah-tenaga-kerja-asing-di-indonesia-98902-tka-china-terbesar-berikut-datanya?page=2>.

⁵MS Devi Asiati SE., “Terbongkar, Alasan Indonesia Dibanjiri Tenaga Kerja Asing Terutama Asal China,” Lipi.Go.Id, last modified 2018, <http://lipi.go.id/lipimedia/terbongkar-alasan-indonesia-dibanjiri-tenaga-kerja-asing-terutama-asal-china/20546>.

⁶Peraturan Menteri Tenaga Kerja Dan Transmigrasi Republik Indonesia Nomor 12 Tahun 2013 Tentang Tata Cara Penggunaan Tenaga Kerja Asing, n.d.

Indonesian territory both foreigners with tourist destinations and up to foreign workers. The existence of covid-19 is certainly a big change and shift to the challenge of life both in terms of health, social and economic. That's led to many companies racking their brains to survive in situations that require them to keep making a profit from their efforts. Indonesia, especially in dealing with the covid-19 pandemic, issued a policy related to foreigners who will enter the territory of Indonesia or who are in the territory of Indonesia, the first regulation issued by the Ministry of Law and Human Rights in anticipation of the spread of this coronavirus is the issuance of Permenkumham RI No. 3 of 2020 concerning the Temporary Termination of Visa-Free Visits, Visas, and Granting Forced State Residence Permits for Citizens of the People's Republic of China. This Ministerial Regulation was first issued on February 5, 2020. But after seeing the condition of foreigners who are not allowed to travel abroad or return to their country due to the coronavirus outbreak, or other needs related to foreigners who are still inside Indonesia, the Ministry of Law and Human Rights continues to issue regulations aimed at making it easier to get immigration facilities during the Covid-19 pandemic.

It is also notified that for the sake of the sovereignty and security of the Indonesian people, only foreigners who have humanitarian reasons such as visiting or accompanying families who are sick or dead or for medical purposes and the subject of PSN (National Strategic Project) in the essential work class with the National Strategic Project (PSN) that is in the field of Infrastructure and Construction that can enter the territory of Indonesia. This was used as a debate about the arrival of 153 Indonesian citizens to Indonesia during the Covid-19 pandemic. But this also has its own legal basis, which is written in Permenkumham RI No. 11 of 2020 concerning the Temporary Prohibition of Foreigners Entering the Territory of the Republic of Indonesia in Article 3, namely the exception to the temporary prohibition for WNA to the territory of Indonesia, namely WNA with the provisions:

- 1) Holder of Limited Residence Permit and Permanent Residence Permit;
- 2) holders of Diplomatic Visas and Service Visas;
- 3) holder of Diplomatic Residence Permit and Official Residence Permit;
- 4) Medical aid and support, food, and humanitarian reasons;
- 5) Transport crew;
- 6) WNA will work on national strategic projects.

From the problems that exist about 153 Chinese citizens entering the Territory of Indonesia, it is also explained that all foreigners recorded in the 153 Chinese citizens are foreigners who fall into the category in accordance with the regulations that have been imposed. Among them are 150 holders of Limited Residence Permits and Permanent Residence Permits and 3 of them hold diplomatic visas.⁷ In addition to considering the arrival of foreigners who come to The Territory of Indonesia as one of the threats of the increase in cases of Covid-19 virus in Indonesia, the Confederation of Indonesian Trade Unions (KSPI) also gave an opinion to reject all TKA originating from abroad not to enter the territory of Indonesia. This is used as an excuse to be

⁷Ardito Ramadhan, "Imigrasi Bolehkan 153 WN China Masuk Ke Indonesia, Ini Dasar Hukumnya," Kompas.Com - 25/01/2021, 10:40 WIB, last modified 2021, <https://nasional.kompas.com/read/2021/01/25/10403251/imigrasi-bolehkan-153-wn-china-masuk-ke-indonesia-ini-dasar-hukumnya?nomgid=0>.

able to better utilize local workers because of the impact of the covid-19 pandemic, there are many people who lose their jobs but must still meet the needs of their families. But the government has its own reasons in providing opportunities for foreigners working in national strategic projects to enter the territory of Indonesia, because it can help the country's economy and complete national development.

After seeing the conditions resulting from the covid-19 pandemic and the enactment of emergency PPKM policies by the government, the Ministry of Law and Human Rights took a role in issuing the latest regulation, namely Permenkumham RI No. 27 of 2020 concerning Restrictions on Foreigners Entering Indonesian Territory during the emergency PPKM period.

In the latest regulation issued, WNA working on PSN is no longer included in the exclusion of people who can enter the territory of Indonesia as long as this latest regulation is enacted. Mr. Yasonna Laoly as minister of Law and Human Rights explained the reason that before the issuance of this latest regulation TKA working in psn entered with various conditions that have been determined, namely letters of recommendation from related institutions and with health protocols that have been set. He then explained that the enactment for TKA requires a transition time this is done because it assumes that there is still money WNA going to Indonesia.⁸ Therefore, it takes a two-day transition time to balance the newly issued regulations with WNA who are on their way to Indonesia. Since the enactment of the regulation, TKA involved in PSN or not prohibited to enter the territory of Indonesia until an unspecified time.

From July 1 to 23 of 2021 there have been a number of 10,612 foreigners through Soekarno-Hatta Airport, including foreigners from Southeast Asia to Europe. The most is from Japan as many as 2,380 people.⁹ Director General (Director General) Bina Marga Ministry of Public Works and Public Housing (PUPR), Hedy Rahadian, revealed that the work of PSN was somewhat hampered because in the process of work using TKA assistance. So that there are no exceptions TKA working in PSN becomes its own influence. One of the efforts made by the Ministry of PUPR in completing the project is to negotiate to be able to import TKA if the situation is desperate. This year there are as many as 233 PSN funded by the state of more than two thousand trillion which are located spread across a number of regions from Sumatra, Kalimantan, Java, Sulawesi, Maluku, Bali, Nusa Tenggara to Papua with each budget that has been set.¹⁰

But with the government policy by considering PPKM and so on, the Ministry of Law and Human Rights takes a role in issuing the latest regulation, namely Permenkumham RI No. 27 of 2021 concerning Restrictions on Foreigners Entering

⁸Rakean Radhana Natawigena, "Pemerintah Jelaskan Alasan Baru Mulai Larang Masuknya TKA," Tim Detikcom - DetikNews Rabu, 21 Jul 2021 20:52 WIB, last modified 2021, https://news.detik.com/berita/d-5651819/pemerintah-jelaskan-alasan-baru-mulai-larang-masuknya-tka?tag_from=wp_hl_judul.

⁹Hendrik Simorangkir, "10.612 WNA Keluar Dari Indonesia via Bandara Soekarno Hatta Periode 1-23 Juli," Medcom.Id 23 Juli 2021 17:08, last modified 2021, <https://www.medcom.id/nasional/daerah/aNr9aPgK-10-612-wna-keluar-dari-indonesia-via-bandara-soekarno-hatta-periode-1-23-juli>.

¹⁰Maulandy Rizky Bayu Kencana, "Pekerja Asing Tak Boleh Masuk Indonesia, Proyek Strategis Nasional Terlambat?," Liputan6.Com 24 Jul 2021, 10:00 WIB, last modified 2021, <https://www.liputan6.com/bisnis/read/4614330/pekerja-asing-tak-boleh-masuk-indonesia-proyek-strategis-nasional-terlambat>.

Indonesian Territory during the enactment of Restrictions on Emergency Community Activities. From the policy makes a lot of foreign workers both the PSN itself out of Indonesia which totals 10,612 foreigners. Pandemic itself by disseminating government policies through Permenkumham No. 27 of 2021 has answered the pros and cons in the community by entering foreign workers during the covid 19 outbreak and the hope that this policy can be implemented properly.

D. Conclusion

The existence of a new policy from the government, the Ministry of Law and Human Rights issued Permenkumham No. 27 of 2021 concerning Restrictions on Foreigners Entering Indonesian Territory during the Emergency PPKM is a restriction on foreigners entering the territory of Indonesia with the exception of foreigners which has:

1. Diplomatic Visa or Service Visa;
2. diplomatic residence permit or official residence permit;
3. limited residence permit or permanent residence permit;
4. health and humanitarian purposes that received recommendations from ministries / institutions that carry out functions to handle covid 19;
5. and the crew of the conveyance that comes with the conveyance.

The existence of the policy that previously allowed foreign workers in the National Strategic Project but Permenkumham Policy No. 27 of 2021 has prohibited TKA from entering Indonesian territory that means it will surely have an impact on the Indonesian economy and the national strategic project itself aims at national development will certainly inhibit the country's national development and has also circulated news as many as 10,612 foreign nationals (WNA) who came out through Soekarno Airport. Hatta, Tangerang, Banten, from July 1 to 23 of 2021 it means it will also affect the country's foreign exchange.

In Permenkumham No. 26 of 2020 explained Visa and/or Residence Permit as referred to in paragraph (1) consisting of official visa, diplomatic, limited residence permit, office residence permit and permanent residence permit in addition to the visa holder of the transport crew and WNA owner of KPP APEC and PSN can also enter the territory of Indonesia.

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