

CHAPTER ONE

INTRODUCTION

A. Background

The country of Indonesia as the traffic of the struggle of domestic workers and immigrant workers to increase dignity, starting from the demands of increasing wages, justice and working hours already voiced from various parts of the country. Ironically, when Indonesian workers fight for their rights and justice, the government seems to close their ears as if they did not hear the shout.

With the Presidential Regulation No. 20 of 2018 concerning the Use of Immigrant Workers, still presents problems in the community and the government. Some people are concerned that simplifying the permits of foreigners working in Indonesia will increase unemployment. Susilo Andi Darma said that so far, the government was not consistent with the Law Number 13 of 2003.¹ Then, what about the implications of adding the Presidential Decree No. 20 of 2018, the reason for not facilitating the entry of immigrant workers, but to simplify the permission of foreigners working in Indonesia.

The Presidential Regulation No. 20 of 2018 is presented not to defend the interests of Indonesian workers. In fact, if it is examined more, in the constitution of the Republic of Indonesia the government should defend the

¹ Fiki, Ariyanti “Ada Aturan Baru Tenaga Kerja Asing, Nasib Pekerja RI di Ujung Tanduk” <https://www.liputan6.com/bisnis/read/3469874/ada-aturan-baru-tenaga-kerja-asing-nasib-pekerja-ri-di-ujung-tanduk> accessed on 09 June 2018, 21.00

lives of Indonesian citizens. The 1945 Constitution gives a mandate to the government to fulfill the rights of citizens to employment and decent livelihoods such as the sound of Article 27 paragraph (2) of the 1945 Constitution, that "*every citizen has the right to work and a decent livelihood for humanity*". That is, the Presidential Regulation clearly injures the mandate of the 1945 Constitution.²

There are some contradictions in the Presidential Regulation Number 20 Year 2018 with The Labor Law Number 13 of 2003. First in Article 9 of the Presidential Regulation No. 20 of 2018. The article states, "*... the ratification of the plan to use immigrant workers (RPTKA) as referred to in Article 8 is a permit to employ immigrant workers.*" That means the business entity that wants to use TKA is not obliged to administer the permit anymore. In fact, the explanation of Article 43 paragraph 1 of the Law Number 13 of 2003 reads, "*Employers who use immigrant workers must have a plan for the use of immigrant workers authorized by ministers or appointed officials.*" The explanation of the article intends to state that the RPTKA is a requirement to obtain a work permit. In the explanation of Article 43 paragraph 1 of the Law Number 13 of 2003, it means that the RPTKA and TKA permits are different things and RPTKA is a condition for obtaining permission.

With Article 9 of the Presidential Regulation Number 20 of 2018, the permit to employ immigrant workers (IMTA) was abolished. Even though RPTKA and IMTA are different things. Second, in Article 10 paragraph 1a of

² 1945 Constitution

the Presidential Regulation No. 20 of 2018 it is stated, "*Employers of TKA are not obliged to have RPTKA to employ immigrant workers who are shareholders who serve as members of the Board of Directors or members of the board of commissioners at TKA employers.*" Article 42 paragraph 1 of the Law Number 13 of 2003 states, "*Every employer that employs immigrant workers must have written permission from the minister or appointed official*". This means that immigrant workers including commissioners and directors must have permission. Article 43 paragraph 1 explains, "*Employers who use immigrant workers must have a plan for the use of immigrant workers authorized by ministers or appointed officials.*" It also means that RPTKA is mandatory. So, Article 10 paragraph 1a contradicts Article 42 paragraph 1 and Article 43 paragraph 1 of the Law Number 13 of 2003. Third, Article 10 paragraph 1c of the Presidential Regulation Number 20 Year 2018 states, "*TKA employers are not required to have RPTKA to employ immigrant workers who are TKA on the type of work needed by the government.*"

In the article above means that there are exceptions for TKA employers not to take care of the RPTKA. Besides Article 43 paragraph 3 of the Law Number 13 of 2003 which contains, "*The provisions referred to in paragraph (1) do not apply to government agencies, international agencies and representatives of immigrant countries.*" That is, except for government agencies, international agencies, and representatives of immigrant countries. The term "government agency" means immigrant workers who work for government agencies. Article 10 paragraph 1c opens space for immigrant

workers who work outside of government agencies without being required to have RPTKA. The presence of this article was allegedly devoted to immigrant workers involved in the construction of infrastructure financed by immigrant loans.

In Article 10 paragraph 1c contradicts Article 43 paragraph 3 of the Law Number 13 of 2003, it means that the presence of TKA in accordance with the Law Number 13 of 2003 concerning Manpower is the transfer of jobs and transfer of knowledge. This is the basic understanding that must be held by legislators. In addition, the Law No. 13 of 2003 expressly prohibits unskilled labor workers from working in Indonesia, except those who have skills such as high-tech engineers, international law experts, international accounting, and others. That is also with the condition that this TKA must be able to speak Indonesian, one TKA accompanied by 10 domestic workers, and there is a transfer of knowledge and transfer of jobs.

The fact revealed in the field was different from what was supposed to be mandated by the Presidential Regulation. Laode said that many immigrant workers were found working as unskilled laborers, such as goods transport drivers. Many of these TKA were found in Morowali, Central Sulawesi. "In Morowali alone, there were around 200 people who were drivers, who took the car," he said. "Generally, in the field, immigrant workers should have the most

green hats and red hats. But it turns out 90% more are yellow hats. On the field. That's a significant difference,"³

On April 24, 2018, Commissioner of the Ombudsman Republic Indonesia (ORI), Laode Ida at a press conference at the Ombudsman office in Jakarta said that he found salary differences between immigrant workers and domestic workers, the Ombudsman state that immigrant workers working in Indonesia are paid three times more that domestic workers.⁴

But on the other hand, the government thinks that the Presidential Regulation number 20 of 2018 is expected to encourage investment in this era of the fourth industrial revolution, or commonly called industry 4.0. President Joko Widodo (Jokowi) stated that the purpose of the issuance of the Presidential Regulation Number 20 Year 2018 concerning the Use of Immigrant Workers (TKA) is to attract many immigrant investors. "*Immigrant Workers Permit (TKA) is easier to boost immigrant investment in the country,*" Jokowi said⁵

The Presidential Decree number 20 of 2018 signed by Indonesian President Joko Widodo on March 26, 2018 and announced by the Minister of Justice and Human Rights Yasonna Laoly on March 29, 2018. This decision raises controversies that are deemed inaccurate and violate rights domestic

³ Marlinda Oktavia Erwanti- detikNews "Ombudsman: Banyak TKA Asal China Jadi Buruh Kasar" <https://news.detik.com/berita/d-3992779/ombudsman-banyak-tka-asal-china-jadi-buruh-kasar> accessed on 05 may 2018, 21.00

⁴ Nuruliyah, Fitriyanti, "Permudah Tenaga Kerja Asing Bekerja di Indonesia, DPRD: Kebijakan yang Kurang Tepat" <http://www.tribunnews.com/nasional/2018/04/26/terungkap-gaji-tenaga-kerja-asing-tiga-kali-lipat-pekerja-lokal-dan-tidak-terkena-pajak> accessed on 05 may 2018, 21.00

⁵ Ari Nursanti, "Perpres Tenaga Kerja Asing Untuk Tarik Investasi" <https://www.pikiran-rakyat.com/nasional/2018/04/12/perpres-tenaga-asing-untuk-tarik-investasi-422715> accessed on 24 July 2019, 09.00

workers or Indonesian Workers. The Presidential Regulation Number 20 of 2018 concerning the Use of Immigrant Workers which causes the emergence of impacts on Indonesian Workers. This focus is on the Presidential Regulation number 20 of 2018 and the effects given to Indonesian Workers by the Presidential Regulation number 20 of 2018 concerning the Use of Immigrant Workers.

B. Statement of Problems

Considering the research background above, the author formulated two questions to be answered, namely:

1. What is stipulated in the Presidential Regulation Number 20 of 2018?
2. What is the impact of the Presidential Regulation Number 20 of 2018 regarding using of immigrant worker to Indonesia workers?

C. Objectives of Research

Based on the research questions above, there are two objectives to be achieved, namely:

1. To understand the essential of the Presidential Regulation Number 20 of 2018 on immigrant workers to Indonesian workers and to analyze the impact of on job availability caused by this Presidential Regulation
2. To propose evaluate on the President Regulation Number 20 of 2018 on using of immigrant worker.

D. Benefit of Research

There are two advantages that could be reached from this research namely:

1. Theoretically

This study gives the advantage to know the importance of protect Indonesian worker.

2. Practically

This This research will give benefit for the government to provide better consideration for the government apparatus in formulating regulation.