

Policy of Criminal Sanctions against Corporations Using Illegal Foreign Workers in Indonesia

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The Corporation is the subject of the development of Indonesian Criminal Law. Corporate criminal liability has been governed by legislation that is specific outside the criminal code. Increasingly, corporations employ illegal foreign workers in Indonesia, but the application of sanctions that have been done are the only the deportation of the foreign workers. The purpose of this study is to analyse corporate criminal liability employing foreign workers in Indonesia. The method of study used is normative juridical by using secondary data. Data is obtained by collecting and analysing literature materials through library studies. The research results can be concluded that the current policy of the corporate criminal liability formulation in Indonesia has recognised the corporation as the subject of criminal law. Corporate arrangements that employ illegal foreign workers are governed by Law No. 13 of 2003 on employment, ranging from chapters 42 to 49, while criminal sanctions are governed by article 185.

Key words: *Criminal sanctions, corporations, foreign workers, illegal, Indonesia.*

Introduction

The development of globalisation and industrialisation today encourages the movement of capital and investment flows to various aspects of life, including in the employment aspect,

resulting in the migration of people or the movement of labour between countries. The free trade era has spawned blocks of trade, at the regional level, characterised by the Asean

Economic Community (MEA) and at the global level in the presence of the World Trade Organisation (WTO). The involvement of Indonesia in the trade organisation is an effort to improve the economy by enhancing the competitiveness of regional and international trade. The consequence of the involvement of the state of Indonesia as a member of the WTO and MEA is the liberalisation of trade of goods, services, and manpower of skilled foreign workers without tariff and non-tariff barriers. MEA has opened up a skilled labour market that has the potential to encourage increased unemployment from educated circles in Indonesia (Kurniawan, 2018).

When foreign workers flow into Indonesia, then corporations or companies as employers who will use foreign workers should understand the mechanisms or procedures of using foreign workers before using their services, and should be able to understand these mechanisms as catalysts governing regulations applied by the Government as a condition of hiring foreign workers. According to article 42 of Law No. 13 of 2003 concerning employment terms to employ foreign workers, written permission of the minister or appointed official is required. To obtain the permit to employ foreign workers, corporations must submit a plan to use foreign workers. But in reality, many corporations or companies in Indonesia are hiring illegal foreign workers (Abdul-Rahman, Wang, Wood, & Low, 2012).

Regulations relating to foreign workers are in article 36 paragraph 1 and labour minister regulations No. 16 year 2015 say that the foreign workers employed in Indonesia must have an education that is in accordance with the position owned and has a certificate of competency or work experience in the field for at least five years. Every foreign worker must also have a migrant worker's companion for language use and technology transfer. However, in reality, many companies in Indonesia employ foreign workers illegally with economic objectives and get more profit by not paying taxes (Maksum & Surwandono, 2017).

To date, the company employing illegal foreign workers is only subject to administrative sanctions, and if there is no sanction, it results in more and more companies that dare to violate the law because of the cause of a deterrent effect to companies. The purpose of this research is to analyse the policy of criminal sanctions on corporations that employ illegal labour in Indonesia.

Methods

The method of study used is normative juridical by using secondary data. Data is obtained by collecting and analysing the literature materials in the form of legislation, government

regulation, presidential regulation, Labour minister rules and transmigration and Decree of the Minister, and the books and documents related to foreign workers. Furthermore, the data is analysed on a qualitative basis.

Results and Discussion

Corporate Criminal Liability That Employs Illegal Foreign Workers in Indonesia

Corporate criminal liability is, of course, not enough to mention corporations as the subject of criminal acts, but also to determine the rules regarding the criminal system and its pipetting, so that a reorientation effort is required as well as a reformulation of corporate criminal liability that employs foreign workers illegally in the future.

The reorientation of corporate criminal liability employing illegal foreign workers, including provisions concerning:

1. When a criminal offense can be said as a criminal offense committed by the corporation;
2. Who can be prosecuted and convicted of crimes committed by corporations;
3. The types of sanctions that correspond to the subject of criminal acts of corporations that are oriented towards giving compensation to victims
4. The formulation of the students should also be clear and consistent so that it can be applied to corporations.

The formulation of these provisions must be firmly regulated to minimise the likelihood of the corporation escaping responsibility for the crimes committed. The flow of illegal foreign workers working in Indonesia will be increasingly fast when the intended corporation cannot be snared, prosecuted, and sentenced to criminal acts based on existing laws and regulations (Wahyudi, 2018).

The aspect of Corporate Criminal Liability in Law

In the case of criminal answers to corporations, though often associated with financial problems, they actually contain further objectives. It is revealed from Friedmann's view that: *"The main effect and usefulness of a criminal conviction imposed upon a corporation cannot be seen either in any personal injury or, in most cases, in the financial detriment, but in the public opprobrium and stigma That attaches to a criminal conviction."*

When studied more deeply the role of criminal law, in the framework of corporate criminal liability has many benefits, so it can be submitted that the reason for the use of criminal law against corporations, among others is:

- a) The criminal law is considered capable of implementing an educative role in defining/establishing and strengthening the boundaries of acceptable deeds (acceptable conduct);
- b) Criminal law moves at a more rapid pace than civil litigation. With the criminal restitution, it is faster to obtain compensation for victims;
- c) Civil litigation is hindered from imposing criminal sanctions;
- d) Joint prosecution (its corporations and agents) requires a criminal forum if the threat of confinement is used to prevent individuals. From a law enforcement standpoint, the joint judiciary is reasonably reasoned because it is easier than a separate closure, and because they allow the public prosecutor to follow the case in an integrated manner.

Corporate Pipetting provides a deterrent effect on corporations and characterises a strong enforcement of the law in a country. However, it needs to be further examined in order to impose a criminal charge on corporations, for example, in the form of closing all or part of the effort is done carefully. This is because the impact of the ruling is very broad. Not only the wrongdoers but also innocent people like workers, shareholders, and the consumers of a factory would suffer. To prevent the negative impacts of corporate pipetting should be thought to ensure the workers/workers, shareholders because of the effect of the corporate's purporting that has a negative impact (Centre, 2004).

In-Law No. 13 of 2003 on manpower, arrangements concerning foreign workers, are discussed in chapter VIII, i.e., From Article 42 to article 49.

Article 42 mentions:

- 1) Any employer who employs a foreign worker shall have written authorisation from the Minister or appointed official.
- 2) Individual employers are prohibited from hiring foreign workers.
- 3) The obligation to have the license referred to in paragraph (1) does not apply to representatives of foreign countries who use foreign workers as diplomatic and consular officers.
- 4) Foreign workers can be employed in Indonesia only in the working relationship for a particular position and for a certain time.
- 5) Provisions of specific positions and certain time, as referred to in paragraph (4) shall be stipulated by a ministerial decree.
- 6) Foreign workers, as referred to in paragraph (4) whose work is discharged and cannot be renewed, can be replaced by other foreign workers.

Article 43 Act No. 13 years 2003 on employment, mentions;

- 1) Employers who use foreign workers must have a plan to use foreign workers authorised by the Minister or appointed official.
- 2) Plan for the use of foreign workers as intended in paragraph (1):
 - a) Reasons for the use of foreign workers;
 - b) The position and/or position of foreign workers in the company's organisational structure concerned;
 - c) Term of use of foreign workers;
 - d) The designation of Indonesian workers as a companion of foreign workers employed.
- 3) The provisions referred to in paragraph (1) do not apply to government agencies, international bodies, and representatives of foreign countries.

Article 44 Act No. 13 years 2003 on employment, mentions;

- 1) The foreign worker's employer is obliged to abide by the provisions on the position and competency standards in force.
- 2) Provisions concerning the position and competency standards as referred to in paragraph (1) shall be stipulated by ministerial decree.

Article 45 Act No. 13 years 2003 on employment, mentions;

- 1) Foreign worker mandatory Employers:
 - a) Appoint the workforce of Indonesian citizens as a companion of foreign workers employed in technology and over the expertise of foreign workers;
 - b) To conduct education and work training for Indonesian workers as referred to in the letter A in accordance with the qualification of department occupied by foreign workers.
- 2) The provisions referred to in paragraph (1) do not apply to foreign workers who occupy the office of Directors and/or commissioners.

Article 46 Act No. 13 years 2003 on employment, mentions;

- 1) Foreign workers are prohibited from occupying positions that manage personnel and/or specific departments.
- 2) Certain departments, as referred to in paragraph (1) shall be governed by Ministerial decree.

Article 47 Act No. 13 years 2003 on employment, mentions;

- 1) Employers must pay compensation for any foreign worker employed by them.
- 2) The obligation to pay compensation, as mentioned in clause (1) does not apply to government agencies, foreign representatives, international agencies, social institutions, religious institutions, and certain departments in educational institutions.
- 3) Provisions of certain departments in the educational institution as referred to in paragraph (2) shall be stipulated by ministerial decree.

- 4) Provisions on the amount of compensation and use shall be governed by government regulations.

Article 48 Act No. 13 years 2003 on employment, mentions; *"Employers who employ foreign workers must return foreign workers to their country of origin after their working relationship expires"* and article 49 Act No. 13 of 2003 on employment, mentions; *"Provisions regarding the use of foreign workers as well as the implementation of education and training of labor workers are governed by presidential decree."*

The foreign worker's arrangement requires that the foreign worker be able to work in a company in Indonesia on the condition of having permission from the Minister or appointed official. In the explanation of article 42 paragraph (1) it explained the need for the provision of permits to use foreign workers is intended to use the manpower of foreign nationals implemented selectively in the framework of the utilisation of Indonesian labour optimally (Ambos, 2018).

The purpose of the arrangement of foreign workers, if reviewed from the legal aspects of employment, is essential to guarantee and provide decent employment opportunities for Indonesian citizens in various fields and levels. So, hiring foreign workers in Indonesia must be done through strict mechanisms and procedures, starting with the selection and licensing procedures until supervision (Askola, 2010).

The arrangement of Article 42 Act No. 13 year 2003 on employment authorises the hiring of foreign workers as an "employer." In general terms, article 1 Figure 4 defines employers or individuals, entrepreneurs, legal entities, or other agencies who employ labour by paying wages or remuneration in other forms. While the forms of "employers" are found in the Ministry of Labour regulation of the Republic of Indonesia No. 16 of 2015 as amended in the regulation of the Minister of Labour Republic of Indonesia (Labour minister regulations) Number 35-year 2015 about the ordinances and use of foreign workers. Article 4 paragraph (1) mentions employers of foreign workers which include:

1. Government agencies
2. International agencies
3. Foreign Country Representatives
4. International organisations
5. Foreign Trade Representative Office, Representative Office of Foreign Company, a representative office of Foreign News
6. Foreign private companies, foreign business entities registered in authorised institutions

7. Legal entities established under Indonesian law in the form of a limited liability company or Foundation;
8. Social, religious, educational and cultural institutions;

While article 4 paragraph (2) mentions; Employers of foreign workers, including civil Federation, firm Alliances (Fa), Commodore (CV), Joint ventures/Associates (UB), and cooperatives are prohibited from hiring foreign workers unless regulated by law.

In Law No. 13 year 2003, there is no understanding of the business entity, which is the company. The business entity itself in the law is only known in section 150 where in this article is in no way related to the legal liability of a business entity, stating: *"Provisions on termination of employment These laws include termination of employment that occurred in a legal entity or not, belonging to a natural person, belonging to the company or belonging to a legal entity, both private and state-owned, and social and business enterprises who have managers and employ others by paying wages or rewards in other forms."*

The company itself pursuant to Article 6 letter a of law No. 13 of 2003 is any form of business that is legal or not, belonging to the individual, the property of fellowship, or belonging to the legal entity, both private and state-owned employees who employ workers/workers by paying wages or remuneration in other forms. Wherefrom this sense, it can be said that the company can be asked for the answer in law No. 13 of 2003 is not only a company that is a legal entity but also not a legal entity (Boswell & Straubhaar, 2004).

Then, according to law No. 13 of 2003, that an entrepreneur is running a company. Where entrepreneurs, according to the provisions of article 1, number 5 of law No. 13 of 2003 are:

- a. An individual, fellowship, or legal entity was running a proprietary company. Where it means it can be said that the intent of this article is those owners of capital who run their own business. It can be in the form of trade companies, civil or firm alliances.
- b. The individual, a fellowship or legal entity that independently runs the company, means those who have the authority to run a business entity that is not his/hers. Namely: The Board of Directors of a limited liability company, allied to the commanding Alliance, or employed by running another.
- c. The individual, the fellowship, or legal entity in Indonesia represents the company as referred to in the letter A and B domiciled in the territory of Indonesia.
This means that the company runs foreign companies in Indonesia or a representative office in Indonesia.

Employers cover not only entrepreneurs but also legal entities and other agencies that employ manpower. So, it can be concluded that the understanding of employers is wider than entrepreneurs. When viewed from the formulation of Law No. 13 of 2003 related to criminal liability by the business entity, we can see the legal subject known as employers. Where the formula of the two terms in law No. 13 year 2003 is not only individual but can also be made by the corporation, either in the form of federal or legal entity or non-legal entity.

The arrangement of violations by employers who employ foreign workers, as mentioned in article 42, is threatened by criminal sanctions as stipulated in article 185, which shall be a form of:

Whosoever violates the provisions as referred to in article 42 paragraph (1) and paragraph (2), article 68, article 69 paragraph (2), article 80, article 82, Article 90 paragraph (1), article 143, and article 160 paragraph (4) and paragraph (7), are subject to imprisonment in the shortest 1 (one) year and maximum 4 (four) years and/or a fine of at least Rp. 100 million (one hundred million rupiahs) and at most Rp. 400 million (four hundred million rupiahs).

If we see the threat of criminal sanctions in article 185 mentioned "Whosoever" as the subject of criminal law, in the arrangement of article 42 mentions employers. So that the author draws the conclusion that the criminal liability of the business/corporation that employs foreign workers who do not have permission/illegal, can only be imposed on the person or caretaker of a company, while the corporation cannot be applied to criminal liability when hiring foreign workers who are illegal (Doonan, 2016).

The allotment of criminal sanctions or action sanctions for corporations must be undertaken carefully. This is due to the impact of the ruling on a very broad corporation because of the suffering of not only the wrongdoers but also the innocent people, such as labour, so it is important to think about preventing the negative impacts of pipetting on corporations (Wahyuningsih, 2017a).

According to Clinard and Yeager, when criminal sanctions are directed to corporations, the criteria are as follows:

- 1) The degree of loss to the public;
- 2) The level of complicity by high corporate managers;
- 3) The duration of violation; The frequency of the violation by the corporation;
- 4) Evidence of intent to violate;
- 5) Evidence of extortion, as in bribery cases;
- 6) The degree of notoriety engendered by the media;
- 7) Precedent in law;
- 8) The history of serious violation of the corporation;

- 9) Deterrence potential; and
- 10) The degree of cooperation evinced by the corporation.

According to the research team of criminal Law of the National Law Development Agency in the report of the assessment of criminal law in 1980/1981 as quoted Muladi and Dwidja Priyatno stated the foundation of a corporation is:

"If the admin alone is not enough to conduct repression, against the delights done by or with a corporation, or that the profits gained by the corporation because the proceeding is large enough or the losses incurred in society. Accordingly, the Board of Trustees is not able to guarantee that the corporation will not once again commit the act prohibited by the law so that the EAS to the corporation must be based on or contain the objectives Good, preventive and repressive pipetting".

More globally, the purpose of corporate commissioning concerns the purpose of integrating pipetting, which includes:

- 1) The purpose of the pipetting is the prevention (general and special) of the purpose of the corporation, that by the corporation's order that the corporation itself will not commit any other criminal offense and the other corporations are prevented from committing a criminal offense, for the sake of the community;
- 2) The purpose of pipetting is the protection of people. The purpose of this pipetting has a broad dimension because it is the purpose of all the pipetting. In a narrow way, it is described as a material of court policy to find the road through the EAS so that the community is protected from the danger of the repetition Criminal. When associated with corporate pipetting, the corporation is no longer able to commit a criminal offense;
- 3) The criminal purpose is to give birth to community solidarity. With corporate pipetting, the compensation of victims to maintain social solidarity is carried out by corporations taken from corporate wealth;
- 4) The purpose of the pipetting is to reward or offset. There is a balance between the criminal and the accountability of perpetrators who pay attention to several factors so that the criminal must not exceed the defendant's fault with any general reasons for prevention.

Corporate orientation, when committing a criminal offense, is based on economic motivation or the orientation of profit or loss; in principle, the corporation when doing certain activities thinks rationally with the main objectives to maximise expected profit. When the profit is greater than the cost incurred, then the corporation will commit a criminal offense; this fee

covers the time required either before or during a crime, the cost to buy a tool, a possible caretaker corporation is arrested, detained, cost-punished, which results in livelihoods or lost businesses if arrested. While the advantage in the form of physical profit in the form of property or wealth and profit in the form of psychic like prestige as well as profit, in this case, is not always profit acquired by the corporation, but also personal gain from the manager or the person acting for and on behalf of the corporation (Loganathan, Rui, Ng, & Pocock, 2019).

The question that comes next is, how to determine who is the directing the mind of a corporation. When viewed in a formal and juridical sense, that is, through the corporate budget, it will be obvious who is the directing mind of the corporation. The Articles of association contain the designation of officials who fill in certain positions following their authority (Wahyuningsih, 2017b).

On the other hand, Lord Diplock suggests that senior officers are: *"They are based on the memorandum and the provisions of the Foundation or the results of the directors or the decisions of the Company's general meeting, is believed to carry out the power of the company."* In addition, according to Lord Morris, a senior official is a person whose responsibilities represent or symbolise the executor of the directing mind and will of the company. (Senior officers are persons whose responsibilities represent or symbolise the executor of the directing mind and will of the company). Therefore, the nature of the senior officers themselves, in the same way, are those who are both individual and collective, given the authority to control the corporation through the actions or policies he made. Senior officers in structural terms and authorities (usually directors and managers) differ from those who work as employees or agents who perform the orders or decisions made by senior officers. In addition, according to Hanafi, the application of identification principles may pose several problems, among others:

- 1) The greater and more business field of a company, the more likely it is that the company will avoid responsibility. As an example, that can be taken to describe this condition, is the case of Tesco, which has more than 800 branches that are required to commit a criminal offense based on "The Trade Description Act 1968" conducted by the branch manager of the store. In this case, the House of Lords decided that the branch manager is another person who is the hands and not the brains of the company; there is no delegation by the Board of Directors of their managerial function in connection with the affairs of the company with the manager the branch.
- 2) The company is only responsible if the person is identified with the company, which is himself individually responsible because he has a "Mens rea" to commit a criminal offense. If there are several "superior officers" involved, each may not have the required level of knowledge in order to constitute the "Mens rea" of the criminal offense. Can a

company be responsible if what the company officials know is quite a "Mens rea"? From that opinion, there are some similarities between corporations and the human body relating to the centre of the brain and organs that carry out commands from the brain. In the corporation, there are also directors and managers who control corporate activities and employees or agents who carry out the policy of the director or manager. The inner attitude and desires of these officers cannot be regarded as the inner desires and attitudes of the corporations.

Ultimately, in the identification theory, the criminal liability imposed on the corporation should pay close attention to who is actually the brain or corporate operational control holder, who is authorised to issue a policy and make decisions on behalf of corporations. A deed can be considered a criminal offense committed by the corporation, only when the criminal act is performed by a senior corporate official who has the authority to move the corporate activities (Bae, Sub, & Button, 2018).

The aspect of Corporate Pipetting That Employs Illegal Foreign Workers

An important part of the pipetting system is establishing a sanction. Its existence will give direction and consideration as to what should be sanctioned in a criminal offense to enforce the validity of the norm. Other conditions of pipetting are the most complex in the criminal justice system because they involve a different institution (Wahyuningsih, 2018).

Sanctions on corporations can be criminal, but they can also be an act of conduct (Maatregel). In this case, the corporate error is identified from a caretaker who has a functional position, (having the authority to represent the corporation, making decisions on the corporate name and authority to apply supervision over the corporation) who commits a criminal act by benefiting corporations, whether as a perpetrator, as a party to conduct, as a party to perform, as an advocate or as a criminal offense assistant committed under his subordinates' business or corporate work (Sitorus, 2016).

From the foundation of thought related to corporate accountability in criminal law issued by the National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia as an academic study in the preparation of the Book of Law, the future criminal law is seen that there are 5 important points in the theory of how a corporation can be sentenced:

1. The criminal act committed by the corporation is a criminal offense committed by the caretaker independently or jointly, having performed, told to conduct acting on behalf of the corporation or for corporate interests;

2. Mens Rea is located on people who have a functional position in the corporate organisational structure that acts for and on behalf of corporations or for corporate interests, based on employment relationships or based on other relationships, in a corporate scope effort, either alone or jointly. Thus, it means the area is also attached to shareholders, not limited only to the director of a legal entity;
3. Allow the criminal liability shared by the corporation and its successor who have a functional position in the corporation or only the deduction of which can be held accountable in criminal law;
4. Sanctions on corporations can be criminal, but can also be an act of conduct (*Maatregel*)
5. For its own legal entity, for criminal sanctions in the form of prison or death, criminal charges cannot be imposed on the body, except on the manager to which the mens area is attached to criminal acts committed by the corporation.

Since the corporation has no outward body appearance, the criminal sanction that can be applied is not a classic criminal sanction unless the imposition of fines as the principal penalty to the corporation will be optimal and considers its execution is quite easy to let alone to have been held as a foreclosure of corporate property. It may also incur additional penalties in the form of temporary revocation of certain permits or corporate operational permits, in order to be more effective in considering by the judge who decides that the cost and potential of lost profits will provide a deterrent effect and prevention for other corporations to commit criminal acts. Furthermore, the following needs to be considered: allotment penalty in the form of revocation of certain corporate operational permits related to the business sector that contributes profit to the corporation, for example, a corporation has gained a lot of work and profit from government projects, then the revocation of corporate operational permits for business or following the government tender will result in the corporation losing its business that has been alive (Of et al., 2017).

According to Mahrus Ali, there are criminal sanctions as well as actions that can be applied or dropped against corporations. First, related to the criminal penalties for corporations, the criminal threat system fines the corporations to prevent them from committing a criminal offense using a penalty-folding system and does not formulate a nominal number of fines in each formulation the special and maximum specific minimum system. The system of fines as a concretisation used the prevention theory as a theoretical base of criminal allotment to corporations, in essence, the criminal charge being made to the corporation must be heavier than the degree of seriousness of the crime. For example, a corporation that proves to commit crimes and gain profit of 50 billion, the penalty should be made by at least 100 billion and a maximum of 200 billion (Leonidou, Leonidou, Fotiadis, & Zeriti, 2013).

Secondly, sanctions for deprivation of corporate profits from committing criminal acts are expected to prevent corporations from committing criminal acts. Sanctions deprivation of

profit contains weakness, namely the difficulty of predicting precisely the amount of profits acquired by the corporation given the complexity of corporate crimes that will use various ways to escape the legal meshes, and the slowness of the lawsuit resulted in a corporation's ease would disguise the profit of the crime resulting in a legitimate advantage.

Thirdly, action sanctions are the closure of all or part of the corporation that proves to commit a criminal offense. Indirectly a corporation closed in whole or in part, will be regarded by society as a sick and problematic corporation. The community will take care of it as an entity that has violated the prevailing norms. The closure of part or all of the corporation must be done by a judge with many things in mind so that corporate closure does not cause negative excesses to workers or employees, and in order to create legal fairness and assurance; the closure of part or all of the corporation needs to also be set regarding the corporate closure period.

In one example of a corporate case that employs illegal foreign workers in the year 2018, the immigration Office of class II Tembagapura, Timika, Papua, caught illegal workers from China in the People's gold mine in Napier District, Papua. From the results of interrogations and investigations conducted on the foreign workers, they revealed the astounding findings concerning salary. In fact, there were also foreign workers who claimed to be paid IDR. 40 million per month. The foreign worker works in the People's gold mine in Kampung Bifasik, Kampung Lagari, and along with the flow of Musaigo River, Makime District, Nabire Regency. The four locations of the people's gold mines were exploited by a company called Pacific Manning Jaya based in Napier. Nowadays, the owner of this company's initials becomes the main target of immigration Tembagapura, Timika. This was submitted to the seat of the Commissioner due to employing dozens of foreign workers without official documents with an alias illegal residence permit. In addition to carrying immigration will also bring such illegal foreign workers to court. They will be charged, having committed an immigration crime with the threat of five-year imprisonment and a fine of IDR. 100 million. Of the 21 foreign citizens who we have already verified at the Tembagapura Immigration Office, Timika, there are free tourist visit visas, and some are using a visitor visa.

It has been submitted before that the principal penalties relevant to the corporation are penalties Act number 13 the year 2003 which impose criminal sanctions on the use of illegal foreign workers stipulated in article 185 I: Whosoever violates the provisions as intended in article 42 paragraph (1) and paragraph (2), article 68, article 69 paragraph (2), article 80, article 82, Article 90 paragraph (1), article 143, and article 160 paragraph (4) and paragraph (7), are subject to prison with a penalty of the shortest 1 (one) year and maximum 4 (four)

years and/or a fine of at least IDR. 100,000,000.00 (one hundred million rupiahs) And at most IDR. 400,000,000.00 (four hundred million rupiahs).

In addition to the criminal Sanctions Act No. 13 of 2003 on manpower, it also governs the administrative sanctions. The administrator shall be governed by Article 190 stating:

1. The Minister or appointed official imposes administrative sanctions on the breach of the provisions as stipulated in article 5, article 15, article 25, article 38 paragraph (2) of Article 45 paragraph (1), article 47 paragraph (1), article 160 paragraph (1) and paragraph (2) of law and rules of implementation.
2. The administrative sanctions referred to in paragraph (1) shall be:
 - (1) Reprimand;
 - (2) Written warning;
 - (3) Limitation of business activity;
 - (4) Suspension of business activity;
 - (5) Cancellation of consent;
 - (6) Cancellation of registration;
 - (7) Temporary suspension of part or all of production equipment;
 - (8) Revocation of license.
- 3) Regarding the authority of the Administrator, as referred to in paragraph (1) and yet (2) shall be governed by Ministerial decree. Administrative sanctions that can be subjected to violations of foreign labour include;

Article 45 paragraph (1) stating: The foreign worker's employer is obliged to:

- a) Appoint the workforce of Indonesian citizens as a companion of foreign workers employed in technology and over the expertise of foreign workers;
- b) To conduct education and work training for Indonesian workers as referred to in the letter A in accordance with the qualification of department occupied by foreign workers.

Article 47 paragraph (1) states: The Employer shall pay compensation for any foreign worker he/she is employed. Article 48 states, "Employers who employ foreign workers must return foreign workers to their country of origin after their working relationship expires.

Based on the explanation above that the administrative sanctions as stipulated in Article 190, the authorised sanction is the Minister or appointed official in criminal sanction, so that the administrative construction is outside the Criminal liability and the judge cannot give administrative sanctions related to the violation of commitment governing foreign workers.

The same thing also Barda Nawawi Arief declared:

“However, this unfortunate administrative action is integrated into the criminal liability system for corporations. That is, the sanction is not a type of criminal sanction that can be imposed by a judge/court if the corporation is filed as a criminal offense. In my opinion, this type of sanctioned "administrative action" is integrated into the criminal sanction system or criminal liability system, such as the act of order in the Economic Criminal Act (Law No. 7 year. 1955).”

Conclusions

- 1) The provisions of the corporation which are working on foreign workers are governed by Law No. 13 of 2003 concerning employment, section 42 to article 49. The arrangement of Article 42 Act No. 13 years 2003 on employment authorises the hiring of foreign workers is the "employer." In general terms, article 1 Figure 4 defines employers or individuals, entrepreneurs, legal entities, or other agencies who employ labour by paying wages or remuneration in other forms. While the forms of "employers" are found in the Ministry of Labour regulation of the Republic of Indonesia No. 16 of 2015 as amended in the regulation of the Minister of Labour Republic of Indonesia (Perestimer) Number 35-year 2015 about the ordinances use of foreign workers. Article 4 paragraph (1) mentions employers of foreign workers.
- 2) The threat of criminal sanctions in article 185 is mentioned "Whosoever" as the subject of criminal law, in the arrangement of article 42 mentions employers. So that the authors draw the conclusion that the criminal liability of the business/corporation that employs foreign workers who do not have permission/illegal can only be imposed on individuals or corporate managers of a company, but the corporation itself cannot be applied to criminal liability when hiring foreign workers who do not have permission/illegal. Law No. 13 of 2003 on employment applies criminal sanctions and administrative sanctions. Criminal sanctions are decided through the mechanisms of the criminal justice system, whereas administrative sanctions are decided by ministers against the use of illegal foreign workers.

Suggestions

- 1) The corporate definition needs to be strictly formulated in the manpower law, so there is no interpretation in the context of the accountability of its fines.
Criminal sanctions against corporations that employ illegal foreign workers should be formulated.
- 2) Administrative sanctions set by the Minister, as stipulated in article 190 of Law No. 13 of 2003 on employment, should be formulated into criminal sanctions as a form of criminal liability against corporations.

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