



Legal Protection for Foreign Workers in Tourism Companies with Post-Divorce Individual Guarantees in Mixed Marriages in Indonesia

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Abstract – This research explores the impact of divorce in a mixed marriage on the work permit of Foreign Workers under individual guarantors in Indonesia. Although the work permit remains valid, divorce can reduce the legal protections and guarantees for foreign workers. Their basic rights should not be revoked, however, unresolved obligations and rights with the employing company should be noted. Companies are expected to assist foreign workers as guarantors for divorced ex-spouses, ensuring the completion of the remainder of their work permits. Government intervention is required to harmonize the relationship between companies and foreign workers through regulations governing the duration of work permits from issuance to expiration. Law No. 6 of 2023, passed by the legislature, confirms the state's commitment to protecting citizens' rights related to work and a humane life. This research utilizes the theories of legal protection, legal certainty, benefit, and justice with a juridical-normative and juridical-empirical/sociological approach. The findings highlight the gap between theory and practice, emphasizing the vacuum of norms in the application of the Job Creation Law Number 6 of 2023. The lack of justice, expediency, and legal certainty is related to the legal vacuum in the law.

Keywords: Foreign Workers, Divorce, Work Permit.

I. INTRODUCTION

Characteristics of globalization encompass alterations in spatial concepts. Globalization, impacting information dissemination, economics, education, and transportation, diminishes the significance of national boundaries as barriers to interaction. This phenomenon significantly amplifies cultural exchanges between Indonesian citizens (referred to as *WNI*) and foreign citizens (referred to as *WNA*), notably evident through marriage. Marriage, a pivotal event in one's life, substantially shapes an individual's legal standing. Mixed marriages, resulting from current trends and the rapid influx of tourists to Indonesia, have become a logical consequence (Komariah, 2016).

Legal implications of mixed marriages are delineated in articles 58 and 59 paragraph (1) of Law Number 1 of 1974 concerning Marriage. These articles dictate that citizenship acquired through marriage or dissolution thereof dictates the governing law concerning both public and civil matters. The legal framework of mixed marriages yields distinct ramifications for the spouses, their offspring, and descendants, including implications regarding assets acquired and brought into the marriage (Prodjohamidjojo, 2007).

Other legal consequences arising from divorce in mixed marriages between citizens include the following (Gautama, 2008);

- Consequences on joint property after marriage.
- Consequences on the Custody Rights of children resulting from mixed marriages between citizens.
- The impact on the citizenship status of the child and each party.

The ramifications of divorce in mixed marriages involving foreign workers and Indonesian citizens carry legal consequences, notably affecting administrative matters, particularly residency permits in the form of *KITAS* (Temporary Stay Permit Card) or *KITAP* (Permanent Stay Permit Card). The impact of divorce on residency permits indirectly intersects with human rights, where the status of a residency permit cannot be immediately terminated. Given Indonesia's membership in the United Nations and its commitment to international human rights treaties, ratified into domestic laws particularly post the reform era, underscores the country's high regard for human rights issues (Diantha & Wisanjaya, 2010).

Law Number 6 of 2023, which determines the Government Regulations in Lieu of Law Number 2 of 2022 on Job Creation, fails to address the transition process for foreign workers holding work permits after divorcing their mixed-marriage partners, leading to a legal void. This gap generates legal ambiguity concerning protection and justice for foreign workers employed in Indonesia who have undergone divorce. The absence of clear regulations within both immigration and employment Laws regarding legal protections and consequences for foreign workers whose spouses were individual sponsors post-divorce has led to illicit practices such as administrative manipulation. Foreign workers often fail to report their divorce status to immigration authorities, enabling them to continue employment in Indonesia. This legal vacuum results in legal uncertainty and societal confusion regarding regulations and their applicability (Pratama, 2019).

This research seeks to address the divergence between legislative intent and actual implementation, commonly referred to as the gap between *das solen* and *das sein*. It specifically focuses on evaluating the enactment and practical application of Law Number 6 of 2023, which serves as the Determination of Government Regulations, succeeding Law Number 2 of 2022 on Job Creation. The study aims to discern the disparities between the stipulated legal framework and the real-time operational landscape, examining how these laws manifest in practical scenarios and considering the resulting implications in various spheres of application.

II. METHOD

Legal research encompasses two primary types; empirical/sociological or non-doctrinal legal research, which employs quantitative analysis, and normative or doctrinal legal research, which relies on qualitative examination (Supranto, 2003). To address the issues in this study, researchers adopted a mixed research approach, combining juridical-normative and juridical-empirical methods. Normative legal research is a scientific procedure aimed at uncovering truths using the logic of legal science from the normative aspect (Ibrahim, 2006).

The juridical-normative approach delves into theoretical aspects, analyzing legal principles, including conceptions, statutory regulations, perspectives, legal doctrines, and associated legal systems. This method was selected because it explores conflicting, ambiguous, or absent legal norms "*blanco*" norms of law.

This study primarily discusses the legal vacuum (*rechtsvaacum*) that engenders disharmony between Employment Law and Immigration Law, despite attempts at harmonization through Law Number 6 of 2023. The regulations pertaining to legal certainty for foreign workers who lose guarantors post-divorce in mixed marriages are notably absent.

In addition to the juridical-normative legal research method, this study employs a sociological/empirical approach, a quantitative non-doctrinal method that investigates real-world issues connected to existing legal theories. Sociological or empirical legal research involves collecting primary data and seeking truth using inductive thinking methods, supported by the latest relevant factual information.

Commencing from the disparity between legislative intent and actual legal application, this study utilizes various research approaches, including legal, conceptual, case-based, and factual (sociological) approaches. Data analysis involves description, interpretation, and argumentation. The focal point of this research centers on examining legal gaps within Law

Number 6 of 2023 regarding regulations concerning Foreign Workers sponsored by divorced spouses.

III. RESULT AND DISCUSSION

1. The Essence of Arrangements for Foreign Workers in Tourism Companies with Individual Guarantors After Divorce in Mixed Marriages

Based on data obtained from the Directorate of Controlling the Use of Foreign Workers (referred to as *PPTKA*), the Ministry of Manpower has recorded a total of 73,011 foreign workers in Indonesia as of June 2023. The One Employment Data website has released information based on validation data from the Applicable Plan for the Use of Foreign Workers (referred to as *RPTKA*). In January 2023, there were 9,997 foreign workers, which increased to 11,727 in February and further to 15,248 in March. Subsequently, the numbers fluctuated to 9,692 in April, 14,748 in May, and 11,599 in June, totaling 73,011 foreign workers for the six-month period (Hamdani, 2023).

As of June 2023, the largest number of foreign workers originated from China, comprising 33,072 individuals, followed by Japan with 7,779, and South Korea with 7,520 individuals. Additionally, there were 3,777 foreign workers from India, 2,607 from Malaysia, 2,471 from the Philippines, 1,582 from the United States (US), 1,471 from England, 1,392 from Australia, 973 from Singapore, and 10,367 from other countries (Muhamad, 2023b).

Based on the data provided by the Ministry of Manpower, from January to June 2023, a total of 77,011 foreign workers (referred to as *TKA*) were distributed across various provinces in Indonesia. Among the provinces, *DKI* Jakarta accommodated the highest number of foreign workers, while West Sulawesi had the fewest. Additionally, there were approximately 34.3 thousand foreign workers dispersed across provinces.

The top ten provinces with the highest number of foreign workers during the first half of 2023 are as follows; *DKI* Jakarta, 6,421 individuals; Central Sulawesi, 5,225 individuals; West Java, 5,108 individuals; Banten, 2,783 individuals; Riau, 2,521 individuals; Riau Island, 2,437 individuals; Maluku, 2,374 individuals; North Maluku, 2,366 individuals; Bali, 2,228 individuals; and East Java, 1,792 individuals (Muhamad, 2023a). In terms of the business sector, the majority of foreign workers were employed in the service sector, totaling 54,845 individuals, followed by 53,970 in the industrial sector, and the remaining 2,931 individuals engaged in agriculture and maritime (Ahdia, 2023).

To support the research data on foreign workers in Bali, the researcher conducted an interview with a representative from the Manpower and Energy Mineral Resources Service of Bali Province, identified as "Ms. Anak Agung Ayu Trisnawati, S. Kom, M.A.P." Additionally, interviews were conducted with Mr. Made Retha, an official from the Badung Regency Industry and Manpower Service.

An interview with Mr. Ida Bagus Setiawan (Head of the Manpower Service and Energy and Mineral Resource of Bali Province regarding Foreign Workers Working in Bali, 2023) explained that;

"The number of Foreign Workers registered with the Bali Province Manpower Office from 2018 to 2020 was 2294 people, with details in 2018 as many as 734 people, in 2019 as many as 699 people, and in 2020 as many as 861 people. There are around 3,600 (*TKA* in Bali), the most in the world of tourism, there are also teachers in marketing but the most are in hospitality."

Interview with Ms. Anak Agung Ayu Trisnawati, S. Kom., M.A.P regarding the number of Foreign Workers in Bali, 2023, Functional Officer of the Manpower and Energy Mineral Resources Department of Bali Province, explained that;

"The legal basis for regulating foreign workers in the province of Bali is regulated in Government Regulation of the Republic of Indonesia Number 34 of 2021 concerning the Use of Foreign Workers and Minister of Manpower Regulation Number 8 of 2021 concerning Implementing Regulations of Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers. The obstacles related to the issuance of this

regulation in Bali are problems such as foreign workers carrying out work activities that are not in accordance with the position stated on their work permit. Since the issuance of the Minister of Manpower Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers, which was promulgated on 11 July 2018, regulations have also come into effect that require all management of reporting work permits for foreign workers in their entirety to go through and be integrated by the central government electronically. Since then, the name *IMTA* has changed to notification and then changed to *RPTKA* planning.”

Interview with Mr. Anak Agung Gde Ratu Pelayun regarding Divorced Foreign Workers in Bali, 2023, Functional Officer, of Bali Province Manpower and Mineral Resources Service, explained that;

“Regarding the number of divorced foreign workers in Bali who have been divorced but have not reported their divorce and continue to work in Bali under the sponsorship of their ex-husband/wife, the exact number is not known, because is not available in the Bali Province Manpower and Mineral Resources Department, but is stored in the Capital investment and One Stop Integrated Services office.”

Apart from conducting interviews with the Manpower and Energy and Mineral Resources Service of Bali Province, researchers also gathered information through interviews with the Badung Regency Industry and Manpower Service, official namely Mr. Made Retha. Regarding the existence and problems of foreign workers working in Badung said;

“The Badung Regency Industry and Manpower Service is also trying to obtain data from the Central Government regarding foreign workers in Badung. This is because in the field many foreign Citizens work as foreign workers in Badung. The office has conveyed problems related to foreign workers, both legal and illegal, whose numbers cannot be detected in Badung.”

In Bali Province there were 2,228 *RPTKA* endorsements issued, with details in January 240, February 349, March 357, April 358, May 507, and June 417, so that until June 2023 in Bali there will be 2,228 *RPTKA* endorsements issued. Furthermore, based on the Recapitulation Data of the Issuance of Permits to Employ Foreign Workers (hereinafter referred to as *IMTA*) of the Bali Province Investment and One-Stop Integrated Service Office shows that in the period 2018 to 2022 there were 2,446 Permits to Employ Foreign Workers (*IMTA*) in Bali (Bali, 2023). The following are the details;

Table 1. Recapitulation of Issuance of Permits to Employ Foreign Workers (*IMTA*) for Bali Province 2018-2022

No	Description	Permit Year
1	Permit to Employ Foreign Workers (<i>IMTA</i>) of 2018	879
2	Permit to Employ Foreign Workers (<i>IMTA</i>) of 2019	571
3	Permit to Employ Foreign Workers (<i>IMTA</i>) of 2020	539
4	Permit to Employ Foreign Workers (<i>IMTA</i>) of 2021	265
5	Permit to Employ Foreign Workers (<i>IMTA</i>) of 2022	192
Total		2446

In line with the implementation of the ASEAN Economic Community (MEA), Indonesia has adapted across various sectors, including the labor market. The MEA's implementation is expected to facilitate the entry of foreign workers into Indonesia. The presence of foreign workers poses both a necessity and a challenge for Indonesia, as the country requires their

expertise in various sectors. Their contribution to the national economy is seen as enhancing competitiveness (Suhandi, 2016).

Regarding the regulation of foreign workers in tourism companies utilizing individual guarantors from former spouses of Indonesian citizens after a divorce in mixed marriages, when analyzed in connection with Philipus M. Hadjon's Legal Protection theory, the government executes protection through two approaches; preventive and repressive (Hadjon, 1987). Preventive legal protection aims to forestall violations before their occurrence, while repressive legal protection involves imposing sanctions such as fines or imprisonment after a dispute or violation.

As the number of foreign workers in Indonesia continues to grow, paramount attention should be given to ensuring legal protection for these workers. Legal protection for workers entails upholding their fundamental rights enshrined in the constitution, as outlined in Article 27 paragraph (2) of the Constitution of the Republic of Indonesia, emphasizing every citizen's right to work and a dignified life. Both Indonesian and foreign citizens ought to have legal certainty that ensures a sense of justice.

Gustav Radbruch in Ali (2002) highlights "justice" as one of the primary objectives or legal ideals of law, alongside expediency and certainty. Justice, utility, and legal certainty are fundamental pillars of law and are indispensable for its effective operation. Therefore, Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation must embody these three legal ideals justice, benefit, and legal certainty for the welfare of all stakeholders involved.

2. Settlement Efforts of Foreign Workers in Tourism Companies Who Still Use Individual Guarantors from Ex-Husbands or Wives who are Indonesian Citizens After Divorce

Indonesian law has extensively regulated marriage and divorce matters through various legislative instruments, including Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975 on the implementation of Law Number 1 of 1974 concerning Marriage, Minister of Religion Regulation Number 11 of 2007, Law Number 3 of 2006 regarding Population Administration, Presidential Decree Number 1 of 1991 on the Compilation of Islamic Law (*KHI*), and other relevant national and international regulations concerning marriage (Susanti, 2018). The legal implications stemming from divorce in mixed marriages pose multifaceted challenges, notably concerning the legal status of the involved parties. It's notable that Law Number 1 of 1974 concerning Marriage lacks specific articles addressing divorce for foreign couples (Simanjuntak, 2005).

Despite the presence of regulations governing foreign workers in Indonesia across various laws, these have yet to fully satisfy the sense of justice in society, particularly concerning justice for foreign workers. For instance, in cases of mixed marriage divorces where a foreign worker has previously used a guarantor linked to their Indonesian spouse, issues arise concerning the validity period of the foreign worker's work permit. Additionally, the Immigration and Employment Laws do not provide concrete and explicit guidelines regarding the status and legal position of foreign workers who have undergone divorce but continue working with the guarantor/sponsor of their ex-spouse.

Aristotle in Machmudin (2000) asserts that the ultimate aim of law is to uphold justice, ensuring that every individual receives what is rightfully theirs. Law must protect the interests of the common good (Ujan, 2009). The principle of distributive justice emphasizes balanced proportional equality, while corrective justice is administered by judges in resolving disputes and penalizing offenders (HS & Nurbani, 2016). A just legal framework is a product of adherence to the principles of justice. Therefore, in developing legal frameworks, the government mustn't overlook these principles, ensuring that justice remains the cornerstone.

Despite governmental efforts through Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation, equal justice for the entire community remains elusive. The new Job Creation Law, despite its

substantial enactment, presents numerous gaps in its norms, particularly regarding regulations post-divorce for foreign workers in mixed marriages. Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers aimed to preempt legal complexities in terms of employment, wages, rights, and obligations of foreign workers, and to maintain a balance between foreign and local workers. A well-formed regulation that ensures legal certainty should be clear, logical, and avoid creating legal ambiguities.

Mertokusumo (2013) stated that legal certainty is a guarantee that the law is implemented, that those entitled to it according to the law can obtain their rights, and that decisions can be implemented. Legal certainty is one of the principles of providing justice, with legal certainty it is hoped that it will not hinder work and create order, with legal certainty things that have been regulated by law can hopefully work effectively. Dispute resolution can be conducted through either litigation or non-litigation procedures. Litigation-based dispute resolution involves legal proceedings within the judicial system. On the other hand, non-litigation resolution refers to dispute settlement procedures conducted outside of court, commonly referred to as alternative dispute resolution.

Efforts to settle foreign workers in tourism companies that use individual guarantors for ex-husbands or wives of Indonesian citizens after divorce. Mixed marriages through litigation and non-litigation have not provided justice and legal certainty. The solutions that can be made are by;

- Make an agreement through mediation between the Foreign Worker and his or her partner to maintain marital status until the residence permit period ends.
- If a divorce occurs, the Foreign Worker and the former guarantor agree through negotiations not to report the status of the divorce, so this has the potential for legal violations and smuggling.
- If a divorce occurs, the Foreign Worker can negotiate with the employer to transfer the guarantee status and negotiate with the employment agency to give the Foreign Worker time to get a replacement guarantor by appointing the Company where the Foreign Worker works.
- If these settlement efforts are not achieved, in fact, according to employment law, foreign workers cannot be subject to any sanctions related to their work permits. This is because there are no norms governing sanctions according to the principle of legality.

3. Regulatory Model for Providing Legal Protection for Foreign Workers in Tourism Companies Who Still Use Individual Guarantor from Ex-Husband or Wife of Indonesian Citizens After Divorce in Mixed Marriages in Indonesia

Juridically, within employment law, the positions of employers and workers are deemed equal. However, in specific circumstances, sociologically, the balance between workers and entrepreneurs may not be equitable. Laborers often find themselves in a vulnerable position (Khoe, 2013).

To ensure the assurance of legal certainty for foreign workers post-divorce, a novel policy model is imperative to address the existing legal vacuum within the Job Creation Law. This law currently lacks provisions for the legal assurance of foreign workers who have lost their ex-spouse guarantors. Addressing this issue promptly is crucial since divorce within mixed marriages can lead to intricate legal implications without clear and definitive legal regulations. The associated problems include the transfer of a foreigner's residency and work permit status post-divorce, challenges in identifying divorce status, and the potential for overstaying.

Jeremy Bentham in Ujan (2009) posited that the purpose of legislation is to ensure the happiness of society. The Model for Providing Legal Protection for Foreign Workers in Indonesia has been incorporated into several laws and regulations, notably Law Number 13 of 2003 concerning Employment, which has been updated by Law Number 6 of 2023. This law deals with the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation, which has been enacted.

The enactment of Law Number 6 of 2023 concerning the Establishment of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation aims to modify regulations concerning the convenience, protection, and empowerment of cooperatives and small to medium-sized businesses, enhance the investment ecosystem, and expedite national strategic projects. Additionally, it aims to improve worker protection and welfare by revising sector-specific laws that currently do not adequately support the acceleration of job creation. Therefore, comprehensive changes using the omnibus method are necessary to address various problems across multiple laws, aiming for synchronization and providing substantial societal benefits.

IV. CONCLUSION

The regulation of foreign workers in tourism companies, particularly concerning their employment in Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 regarding Job Creation, lacks provisions regarding the remaining work permit duration for Foreign Workers who have lost their individual guarantors due to a divorce in mixed marriages. This absence of regulation leaves Foreign Workers vulnerable, lacking legal protection and certainty, which hampers the attainment of social justice. Efforts to resolve this issue through litigation or non-litigation methods have not yielded justice or legal certainty for these workers.

Several solutions can be proposed to address this challenge; firstly, initiating a mediation agreement between the Foreign Worker and their former partner to retain marital status until the residency permit expires. Secondly, negotiating with the former guarantor not to report the divorce status, although this may involve legal violations. Thirdly, seeking negotiations with the employer and employment agency for a transfer of guarantor status or allowing time to secure a new guarantor from the employing company. Finally, in cases where these efforts fail, existing employment laws don't enforce sanctions on Foreign Workers due to the absence of governing norms based on the principle of legality.

Novel findings suggest modifying existing laws, such as incorporating additional obligations for employers in the Employment Law updated under Law Number 6 of 2023. Specific clauses could include employers offering full assistance to Foreign Workers who lose their Indonesian citizen spouse guarantor after a legal divorce. Details could further elucidate the assistance and its transition from individual to corporate guarantors. These technicalities could be empowered and regulated by the government.

Recommendations to protect Foreign Workers facing the loss of their personal guarantor due to mixed-marriage divorce;

- Foreign workers should strive to maintain relationships with their intermarried partner guarantors to sustain their work permits.
- Employers should be proactive in aiding foreign workers facing the loss of their personal guarantor, potentially by assisting in the transfer of collateral to the company where the worker is employed.

For effective solutions, it's imperative for the State and Government, through the legislative body, to revise the Job Creation Law. Modifications to Article 45 could include ensuring employers provide comprehensive assistance to foreign workers following a legal divorce, specifying the assistance as the appointment of a corporate guarantor, and assigning technical implementation of guarantor transfers to implementing regulations.

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