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# Legal Certainty Regarding the Employment Period of Foreign Workers in Indonesia

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**Abstract.** The use of foreign workers in Indonesia is expected to improve the quality of Indonesian workers, but in reality, the number of foreign workers entering Indonesia has actually reduced job opportunities for Indonesian workers. Inconsistent regulations have caused violations in the use of foreign workers, particularly regarding the duration of foreign worker employment, which is currently contradictory. PP 34/2021 limits the extension period for foreign workers in Indonesia to a maximum of 2 (two) years and a maximum of 5 (five) years for foreign workers in Special Economic Zones. However, Minister of Manpower Regulation No. 8/2021 stipulates something different, namely that the extension of the use of foreign workers can be extended in accordance with immigration laws and regulations. This study aims to provide legal certainty regarding which regulations should be applied to determine the length of employment for foreign workers in Indonesia. This study uses a normative legal research method with a regulatory approach and a conceptual approach. The results of this study indicate that regulations that are in conflict with norms must be harmonized. Based on the theory of normative hierarchy and the principle of preference, the regulation that should be enforced is that stipulated in PP 34/2021, so that the time limit for the extension of the use of foreign workers is a maximum of 2 years and a maximum of 5 years for foreign workers in special economic zones.

**Keywords:** Harmonization; time period; foreign workers

## Introduction

Labor market liberalization, as a form of liberal economic process, entered Indonesia following the economic crisis of 1998. To overcome the crisis at that time, Indonesia had to begin implementing a flexible labor market system as a condition for receiving loans from the World Bank and the International Monetary Fund (IMF) (Agustan, 2025, p.359). With this system, the movement of labor became easier (free personal movement), allowing workers to enter job markets outside their country's borders, a phenomenon known as labor market liberalization (Suleiman, Slighoua, and Haddad, 2024). This led to the inevitable entry of foreign workers (hereinafter referred to as TKA) into Indonesia.

Indonesia actually has an abundant labor supply, but there are still limitations in terms of competence, particularly related to the mastery of the latest technology and the application of management systems that are capable of running optimally (Sitti Nurbaya & Dg. Maklassa, 2024). Therefore, companies are forced to bring in TKA to fill this gap (Maghfiroh & Nurmawati, 2023). The presence of foreign workers in Indonesia was initially expected to solve several labor-related problems in Indonesia, namely the lack of job opportunities and the low quality of the workforce. This was also caused by the high population growth rate, which led to an imbalance between the large population and the available jobs (Juliana, Taaha, Guampe, 2023). When talking about employment opportunities, the most important factor is the quality of the workforce itself, making these two issues even more complex

and interrelated. To overcome these problems, the Indonesian government has opened up opportunities and facilitated the presence of foreign parties in Indonesia, both in the form of foreign investment and as professional experts to provide assistance to Indonesian workers (TKI) in order to improve the quality of Indonesian human resources and create jobs to absorb many TKI (Oktarina et al., 2024).

The easing of regulations on the use of foreign workers in Indonesia has led to an increasing number of foreign parties entering the country. Generally, these are foreign investors who have begun to invest their capital in Indonesia through Foreign Investment Companies (PMA) and fill various existing job positions. In line with the increase in PMA companies in Indonesia, the number of foreign workers entering the country has also increased from year to year (Rahmatika and Annazah, 2020, p.29). Based on data compiled by the Ministry of Manpower, in 2021 there were 88,271 foreign workers in Indonesia, then increased significantly by 26.36% in 2022 to 111,537 people (Sadya, 2023). Based on the latest data released by the Ministry of Manpower through the Satu Data platform, as of July 2024, the number of foreign workers employed in various sectors in Indonesia has reached 100,351 (Idntimes, 2024).

In practice, the use of foreign workers in Indonesia has also been marred by various problems. The large number of foreign workers entering Indonesia has actually led to a reduction in job opportunities for Indonesian workers, while also opening up the potential for legal violations (Wiranata, Prawesthi, & Amiq, 2024). This is because the main objective of using foreign workers in Indonesia has not been fully achieved and there is a lack of government supervision over the use of foreign workers. Inconsistent, incomplete, and unsystematic regulations are also reasons for the rampant violations that occur in the use of foreign workers in Indonesia. One of these is the inconsistency in the maximum time limit for foreign workers who have obtained work permits in Indonesia. Based on the Manpower Law and Law 6/2023, the use of foreign workers in Indonesia is only temporary and limited to certain positions that are deemed necessary to improve the quality of the Indonesian workforce. This provision is explicitly stated in Article 42 paragraph (4) of Law 6/2023, which stipulates that:

"Foreign workers may only be employed in Indonesia in an employment relationship for specific positions and for a specific period of time and must have the competencies required for the position to be filled."

The phrase "specific period" is regulated in Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers (hereinafter referred to as PP 34/2021). In PP 34/2021, the rules regarding the working period for foreign workers are adjusted to the type of work and the period of validity of the Foreign Worker Utilization Plan (RPTKA) as their work permit. This is as referred to in Article 17 of PP 34/2021, which stipulates that:

Approval of the RPTKA for temporary work is granted for a maximum period of 6 (six) months and cannot be extended.

Approval of the RPTKA for work lasting more than 6 (six) months and approval of the non-DKPTKA RPTKA is granted for a maximum period of 2 (two) years and can be extended.

RPTKA KEK approval is granted for a maximum period of 5 (five) years and may be extended.

RPTKA KEK approval for director or commissioner positions is granted once and is valid for as long as the foreign worker concerned is a director or commissioner.

The provision stipulates that the period of employment of foreign workers in Indonesia is adjusted to the period of validity of the approved RPTKA. However, the provision contains the phrase "... may be extended" in paragraphs (2), (3), and (4), which is further regulated in Article 21 paragraph (6) of PP 34/2021 as follows:

"The term of each RPTKA extension approval as referred to in paragraph (5) shall be a maximum of 2 (two) years, and RPTKA extension approvals in SEZs shall be a maximum of 5 (five) years."

Based on the provisions of Article 21 paragraph (6) of PP 34/2021, it can be concluded that there is a clear time limit for foreign workers to work in Indonesia. For foreign workers employed in jobs

lasting more than 6 (six) months and in jobs not covered by the Foreign Worker Compensation Fund (DKPTKA), the period of employment is 2 (two) years and can be extended for a maximum of another 2 (two) years, bringing the maximum period to 4 (four) years. Meanwhile, for foreign workers employed in Special Economic Zones (KEK), the working period is 5 (five) years and can be extended for a maximum of 5 (five) years, bringing the maximum time limit to 10 (ten) years.

The provisions regarding the time limit for foreign workers to work, as stated in PP 34/2021, are very clear. However, if we look at the regulations below it, namely Minister of Manpower Regulation Number 8 of 2021 (hereinafter referred to as Permenaker 8/2021), there are provisions that contradict the period stipulated in PP 34/2021. The provision in question is Article 20 of Permenaker 8/2021, which stipulates that:

Approval of RPTKA for temporary work is granted for a maximum period of 6 (six) months and cannot be extended.

Approval of RPTKA for work lasting more than 6 (six) months is granted for a maximum period of 2 (two) years and can be extended in accordance with the provisions of immigration laws and regulations.

Approval of non-DKPTKA RPTKA is granted for a maximum period of 2 (two) years and may be extended in accordance with the provisions of immigration laws and regulations.

Approval of KEK RPTKA is granted for a maximum period of 5 (five) years and may be extended in accordance with the provisions of immigration laws and regulations.

Approval of RPTKA KEK for the position of director or commissioner is granted once and is valid for as long as the foreign worker concerned is a director or commissioner in accordance with the provisions of laws and regulations in the field of immigration.

Approval of RPTKA KEK is granted to employers of foreign workers who employ foreign workers in the KEK area and may be granted for work locations across KEK areas.

The phrase "... can be extended in accordance with the provisions of immigration laws and regulations" creates a conflict of norms between Article 21 paragraph (6) of PP 34/2021, which clearly regulates the time limit for RPTKA extensions. However, Article 20 of Minister of Manpower Regulation No. 8/2021 actually relaxes these time restrictions by linking them to immigration regulations. This phrase has eliminated legal certainty regarding the time limit for foreign workers to work because it allows for the extension of RPTKA as long as it does not conflict with immigration regulations. Meanwhile, if we look into immigration regulations, there are no provisions related to the maximum period for foreign workers to work in Indonesia, especially RPTKA, which is an absolute requirement for a foreign worker to work in Indonesia.

The inconsistency of these provisions creates legal uncertainty regarding the maximum period for a foreign worker to work in Indonesia. This will certainly cause confusion for interested parties such as employers, foreign workers, and other officials in determining which rules should be used as guidelines in organizing activities that employ foreign workers in Indonesia. The existence of this conflict of norms is also a legal loophole, which, if not immediately addressed, will create ambiguity that can be exploited by irresponsible parties (Arifin and Satria, 2020), thereby creating new problems in the use of foreign workers in Indonesia.

The purpose of this article is to harmonize the laws and regulations related to the use of foreign workers so that legal certainty can be achieved. Therefore, this study focuses on the urgency and concept of imposing strict and measurable work time limits for foreign workers in Indonesia, as well as closing the opportunity to exploit legal loopholes through repeated work period extensions. Previous scientific studies have focused on restricting the types of work for foreign workers that have the potential to take away job opportunities for Indonesian workers (Krisna, 2023) (Hasibuan, 2020). Therefore, this study offers a new perspective in the form of **limiting the duration** of foreign worker employment. This study

is based on the idea that regulating the type of work alone is not effective enough to prevent the misuse of foreign workers, as there are still legal loopholes in the practice of extending work permits.

## Method

This study uses a normative legal research method that focuses on analyzing positive legal norms, legal principles, and legal doctrines (Muhaimin, 2020). The approach used is the Statute Approach by examining the relevant legislation on the period of use of foreign workers, namely Law Number 13 of 2003 concerning Manpower, Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers, Minister of Manpower Regulation No. 8 of 2021 concerning the Implementation Regulations of Government Regulation No. 34 of 2021 concerning the Use of Foreign Workers, and Law No. 6 of 2011 concerning Immigration. A conceptual approach was used to analyze legal concepts related to the period of foreign worker employment. The legal sources used in this study were primary legal materials, in the form of laws and regulations, and secondary legal materials, in the form of books and scientific journals. A document study was conducted as a method of data collection.

## Discussion

### Harmonization of Foreign Worker Employment Periods in Indonesia

The use of foreign workers in Indonesia has seen numerous violations each year, committed by both employers and foreign workers themselves (Pakasi, 2022, p.11). The most common violations relate to the length of time foreign workers stay in Indonesia, namely work permits and residence permits (overstay) (Herlian, 2022). According to data from the Directorate General of Immigration, in 2021, administrative sanctions were imposed on 5,105 foreigners. Of these, 1,582 were deported for violating immigration regulations in Indonesia.

Based on data from the West Java Regional Office of the Ministry of Law and Human Rights, in 2022 there were 2,193 foreign workers working in the West Java region and 43 people were deported for committing violations. In 2023, based on data from the Ministry of Manpower, there were 784 companies that committed violations regarding the use of foreign workers. On the other hand, at the beginning of 2023, specifically from January to March, based on data from the Ngurah Rai Bali Immigration Office, there were 65 cases of residence permit abuse by foreign nationals, 45 of whom were deported. In addition to this data, there is still a lot of other data from different regions and previous years.

According to the data, there are numerous violations in the use of foreign workers every year. The types of violations are still dominated by cases of residence and work permit violations. This shows that regulations related to the length of employment for foreign workers in Indonesia are crucial. Ideally, employers and foreign workers should be aware of these regulations from the outset to avoid such violations. In reality, however, there is still legal disharmony in the regulation of the length of time foreign workers can work in Indonesia under positive law. As a first step to minimize violations in the use of foreign workers, it is necessary to harmonize the legal provisions on the duration of employment contained in PP 34/2021 and Permenaker 8/2021. This needs to be done to close legal loopholes and ensure legal certainty for all interested parties (Nur, Zubaedah, and Hamid, 2023). Regarding the harmonization of these regulations, the theory of legal certainty and the principle of preference will be used as analytical tools to reconcile the conflicting norms.

Harmonization is the process of aligning existing and draft legislation related to a particular area of regulation. According to Syahlan (2021), the purpose of harmonization is to ensure that the substance regulated in legislation does not overlap, but rather complements each other (supplementary), is interrelated, and provides more detailed content in lower levels of regulation. A written regulation must contain at least three elements, namely clarity in formulation, consistency in formulation (both internally within the regulation and externally in harmony with other regulations), and the use of appropriate and easily understandable language.

Legal harmonization, according to L.M. Gandhi, involves changes to legislation, government decisions, judicial decisions, legal systems, and legal principles to improve legal unity, legal certainty, justice (gerechtigheid), and equality (bilijkeid). The utility and clarity of the law without compromising legal pluralism are also necessary (Tresnadipangga, Fuad, and Suartini, 2023).

Forms of harmonization of laws and regulations consist of vertical harmonization and horizontal harmonization as follows (Dwiatmoko & Nursadi, 2022):

Vertical harmonization: carried out by tracing the laws and regulations that apply in a particular field, then identifying whether there are conflicts between them in accordance with their hierarchy. In addition, vertical harmonization must also take into account the year and number of the relevant laws and regulations.

Horizontal harmonization: carried out by tracing laws and regulations that are equal in hierarchy and regulate the same or related fields. Horizontal harmonization also needs to be carried out chronologically according to the order in which they were enacted.

Regarding the disharmonization or conflict of norms that occurs in Article 21 paragraph (6) of PP 34/2021 with Article 20 of Permenaker 8/2021. Therefore, the norm regarding the time limit for extending the RPTKA approval needs to be harmonized vertically, because the two regulations have different hierarchical positions. The hierarchy of Indonesian laws and regulations is stipulated in Article 7 paragraph (1) of the PPP Law as follows:

The types and hierarchy of laws and regulations consist of:

a. The 1945 Constitution of the Republic of Indonesia;

b. Decrees of the People's Consultative Assembly;

c. Laws/Government Regulations in Lieu of Laws;

d. Government Regulations;

e. Presidential Regulations;

f. Provincial Regulations; and

g. Regency/City Regulations.

Furthermore, Article 8 of the PPP Law stipulates that:

Types of legislation other than those referred to in Article 7 paragraph (1) include regulations established by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, **ministers**, agencies, institutions, or commissions of equivalent status established by law or by the government under the authority of law, provincial representative councils, governors, regency/city representative councils, regents/mayors, village heads, or equivalent officials.

The laws and regulations referred to in paragraph (1) are recognized and have binding legal force as long as they are mandated by higher laws and regulations or established based on authority.

Considering the hierarchy of laws and regulations, it is clear that ministerial regulations are lower than government regulations established by the President. Referring to the principle of preference, namely *Lex Superior Derogat Legi Inferiori*, in the event of a conflict between higher and lower laws, the lower law must be set aside (Saputra, 2025). Therefore, the rule that must be used is Article 21 paragraph (6) of PP 34/2021, and the norm in Article 20 of Permenaker 8/2021 must be set aside and harmonized to avoid prolonged disharmony of norms (Banola et al., 2025).

It should be noted that the substance of the norm in Article 20 of Permenaker 8/2021 that causes the conflict of norms is the phrase "... can be extended in accordance with the provisions of laws and regulations in the field of immigration," which was previously regulated explicitly in Article 21 paragraph (6) of PP 34/2021 regarding the extension of RPTKA, namely for 2 years and 5 years for KEK jobs. To eliminate this conflict of norms, the provisions of Article 20 of Permenaker 8/2021 need to be harmonized with the provisions already stipulated in PP 34/2021. The formulation is as follows:

1. Approval of the RPTKA for temporary work is granted for a maximum period of 6 (six) months and cannot be extended.
2. Approval of the RPTKA for work lasting more than 6 (six) months is granted for a maximum period of 2 (two) years and can be extended.
3. Approval of non-DKPTKA RPTKA is granted for a maximum period of 2 (two) years and may be extended.
4. Approval of KEK RPTKA is granted for a maximum period of 5 (five) years and may be extended.
5. **The extension referred to in paragraphs (2) and (3) is granted for a maximum period of 2 (two) years, and the extension referred to in paragraph (4) is granted for a maximum period of 5 (five) years**.
6. Approval of the RPTKA KEK for the position of director or commissioner is granted once and is valid for as long as the foreign worker concerned is a director or commissioner in accordance with the provisions of laws and regulations in the field of immigration.
7. Approval of the RPTKA KEK is granted to employers of foreign workers who employ foreign workers in the KEK area and may be granted for work locations across KEKs.

This alignment is carried out by deleting the phrase "... in accordance with the provisions of immigration laws and regulations" in paragraphs (2), (3), and (4), and adding a new paragraph, namely paragraph (5), which contains a concrete time period related to the extension of the RPTKA. The formulation of the norm in paragraph (5) has been adjusted to the norm stipulated in Article 21 paragraph (6) of PP 34/2021 as follows:

"The period for each approval of an RPTKA extension as referred to in paragraph (5) is given for a maximum of 2 (two) years, and the approval of an RPTKA extension in a Special Economic Zone (KEK) is given for a maximum of 5 (five) years."

With the change in the norm in Article 20 of Permenaker 8/2021 as formulated above, it will create legal certainty regarding the duration of the RPTKA extension. Interested parties such as employers, foreign workers, and other relevant officials will know from the outset the time limits for foreign workers in Indonesia, thereby facilitating the supervision of the use of foreign workers. This is referred to as balance or harmonization as a reinforcement of the existence of law, namely that law functions as a social institution to regulate the life of society.

## Authority to Determine the Duration for Extending Foreign Worker Employment in Indonesia

Provisions regarding the time limit for the use of foreign workers, which are linked to immigration rules, have led to speculation that immigration authorities also have the authority to interfere in labor matters, particularly those relating to foreign workers in Indonesia. This is because, according to the Manpower Act and its subordinate regulations, matters relating to the use of foreign workers in Indonesia fall under the jurisdiction of the Manpower Minister, but coordination with immigration authorities is still required for matters relating to visas, residence permits, and the monitoring of foreign workers as foreigners in Indonesian territory. To determine which party has the legitimacy to decide and execute orders related to the time limit for the use of foreign workers, it is necessary to first examine the authority, main duties, and functions of each party, both the Ministry of Manpower and the immigration authorities, regarding their involvement in regulating the use of foreign workers in Indonesia.

Authority of the Manpower Ministry:

Based on the Manpower Law, the Manpower Ministry also has duties related to the implementation of foreign worker use in Indonesia, which can be seen in Articles 42 to 49 of the Manpower Law. Furthermore, based on Presidential Regulation Number 164 of 2024 concerning the

Ministry of Manpower (hereinafter referred to as Perpres 164/2024), it is explained in more detail that the use of foreign workers is under the auspices of the Directorate General of Manpower Placement and Expansion of Employment Opportunities (hereinafter referred to as Ditjen Binapenta & PKK). This Directorate General has the duties and functions as stipulated in Article 16 of Perpres 164/2024 as follows:

In carrying out the duties referred to in Article 15, the Directorate General of Manpower Placement and Expansion of Employment Opportunities performs the following functions:

a. Formulation of policies in the field of domestic labor placement and protection, expansion of employment opportunities, **control of foreign workers**, and guidance for job seekers;
b. Implementation of policies in the field of domestic labor placement and protection, expansion of employment opportunities, **control of foreign workers**, and guidance for job seekers;
c. Formulation of norms, standards, procedures, and criteria in the field of domestic labor placement and protection, expansion of employment opportunities, and **control of foreign workers**;
d. Provision of technical guidance and supervision in the field of domestic labor placement and protection, expansion of employment opportunities, and **control of foreign workers**;
e. monitoring, analysis, evaluation, and reporting in the areas of domestic labor placement and protection, expansion of employment opportunities, **control of foreign workers**, and guidance for job placement;
f. administration of the Directorate General; and
g. other functions assigned by the Minister.

Based on the above provisions, it is clear that the official with duties and authority related to the regulation of foreign worker employment in Indonesia is the Directorate General of Binapenta & PKK (under the Manpower Ministry), which will subsequently carry out all matters and procedures related to foreign worker employment as stipulated in PP 34/2021 and Permenaker 8/2021, including the granting of permits for the extension of the period of use of foreign workers or RPTKA.

Immigration Authority:

The term immigration comes from the Latin word “migration”, which means the movement of people from one place or country to another (Zulfikar, 2024). The functions of immigration are to provide immigration services, enforce the law, ensure national security, and facilitate the development of community welfare. Immigration has the task of supervising various matters related to the movement of people entering or leaving Indonesian territory to uphold the sovereignty of the state. (See Article 1 paragraph (1) of the Immigration Law). Related to the function of immigration regarding the use of foreign workers is the granting of residence permits in accordance with recommendations given by officials in the field of employment. This is regulated in Article 34 of Permenkumham 22/2023, which essentially stipulates that in order to obtain a residence permit, foreigners, in this case foreign workers, need to attach a statement from a government agency in the field of labor as a document explaining their purpose and objective for coming to Indonesia as well as the length of time the foreign worker will stay in Indonesia.

Regarding the residence permit for foreign workers, this cannot be equated with the time limit for foreign workers to work in Indonesia. This is because foreign workers working in Indonesia can obtain a permanent residence permit (see Article 54 paragraph (1) and Article 59 of the Immigration Law), but the use of foreign workers is only temporary and limited to a certain period of time in accordance with the provisions of Article 42 of Law 6/2023. If permanent residence permits are used as a reference for the time limit for working, it will eliminate the temporary nature and can disrupt the labor market system in Indonesia, especially regarding employment opportunities for Indonesian migrant workers. Moreover, to date, there have been rampant violations of residence and work permits by foreign workers

(Kondoura, Hamdi, & Syahrin, 2025). In addition, the period of employment must first be stated in the RPTKA and approved by the Minister of Manpower or the authorized official, after which a residence permit recommendation will be obtained based on the RPTKA. Therefore, when viewed from the sequence of procedures for the use of foreign workers, the determination of a residence permit is the final stage after foreign workers obtain a work permit through the RPTKA and cannot be done in reverse. (See Article 21(7) of Government Regulation No. 34/2021).

So, in essence, the duties and functions of the Director General of Immigration in this case are to carry out supervisory functions (Oemar, 2020). This starts from the entry of foreign workers into the territory of the Republic of Indonesia, their stay and activities such as work and other life activities until the permitted time limit, until the return of foreign workers to their home countries. This is because the immigration authorities have a selective policy which states that, "... only foreigners who provide benefits and do not endanger public security and order are allowed to enter and stay in Indonesian territory" (Hendrawan, Siregar, and Shatrya, 2022).

Based on the above descriptions, the provisions in Article 20 of Permenaker 8/2021, which contains the phrase "... can be extended in accordance with immigration laws and regulations," cannot be enforced. This is because, apart from the fact that to date there are no regulations in the field of immigration that determine the working time limit for foreign workers, the Directorate General of Immigration does not have the main task and function of interfering in labor matters, particularly regarding the working time limit for foreign workers. By not enforcing the phrase "... can be extended in accordance with immigration laws and regulations," the conflict between Article 21 paragraph (6) of PP 34/2021 and Article 20 of Permenaker 8/2021 will be eliminated.

## Conclusion

In order to ensure legal certainty regarding the duration of foreign worker employment in Indonesia, it is necessary to harmonize Government Regulation No. 34/2021 with Minister of Manpower Regulation No. 8/2021. Based on the theory of legal certainty, the hierarchy of norms, and the principle of preference, namely Lex Superior Derogat Legi Inferiori, the rule that should be used is Article 21 paragraph (6) of PP 34/2021 because it has a higher position than Permenaker 8/2021, so that the provisions in Article 20 of Permenaker 8/2021 must be set aside and harmonized with Article 21 paragraph (6) of PP 34/2021. It is also recommended that all government agencies, when drafting regulations, first conduct a review and synchronization of all norms to avoid creating complementary regulations that conflict with either higher-level regulations or existing regulations. This is necessary to uphold legal certainty as reflected in every provision of Indonesian regulations.

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