



## Legal Protection of Foreign Workers (TKA) in Indonesia

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**Abstract:** The primary objective of this study is to investigate the legal safeguards in place for foreign workers in Indonesia, also known as TKA. The study employed a normative legal research methodology, incorporating statutory, case-based, and conceptual approaches. Judges base their decisions on Article 62 of Labor Law Number 13 of 2003, ensuring that their rulings abide by the law to promote legal certainty and justice. Labor protection is a form of recognition of the rights of workers/laborers as human beings who must be treated humanely. In a country based on law (rechstaat), the mandate for the laws and regulations to be applied correctly is that judges must side with justice (moral justice).

**Keyword:** Protection, Legal, Foreign Workers.

### INTRODUCTION

With the rise in the presence of foreign workers in Indonesia, there is a growing emphasis on providing legal safeguards for labor. This focus is intended to guarantee the fundamental rights of workers, as outlined and safeguarded by the constitution. For instance, Article 27 paragraph (2) of the 1945 Constitution states that “Every individual has the right to employment and a livelihood that upholds human dignity.” This demonstrates that this right is applicable to all individuals, regardless of their nationality, and they should have access to legal assurances to experience fairness (Shadiqin, 2019).

Labor can be defined as an individual who has the ability to do work. This work can aim to produce goods or services, and can be done to fulfil personal needs or the needs of society in general (Muhammad, 2015). According to Labor Law Number 13 of 2003, foreign workers are described as individuals who are not citizens of Indonesia but have a visa allowing them to work in the country (Sudja'i & Mardikaningsih, 2021). The word employment itself refers to a situation where a person, commonly referred to as a worker, works for another person referred to as an employer in exchange for wages. This definition overrides the distinction between work done independently (outside the employment relationship) and work done under the supervision or guidance of (working for) another person. Furthermore, Labor Law Number 13 of 2003 on Labor defines labor as everyone who has the ability to do work to produce goods (Fathammubina, 2018).

The legal structure governing the employment of foreign workers in Indonesia is intricate and consists of multiple layers of laws. The law is the main basis for restrictions on foreign workers, which is then clarified and detailed in presidential regulations and labor ministerial regulations. The regulations set by the labor minister fully govern the employment of foreign workers, as outlined in Labor Law Number 13 of 2003 on Labor, specifically in Articles 42 to 49. The policy regarding foreign workers is clearly stated in Article 42, which mandates that employers must obtain written permission before hiring foreign workers. While employing foreign workers is generally prohibited, exceptions can be made under urgent circumstances and in accordance with international law. Article 42 emphasises the need for strict control over the employment of foreign workers in Indonesia, aiming to ensure the optimal use of Indonesian labor resources. Subsequent regulations related to foreign workers are a further elaboration of the intent and purpose of Article 42 paragraph (1) (Solechan, 2018).

The case related to foreign workers, namely PT Dua Cahaya Anugrah (defendant and employer) unilaterally dismissed Maria Antonia Gomez Fernandez (plaintiff and worker), based on this case the company unilaterally terminated the employment relationship (hereinafter referred to as PHK) before the term of the employment agreement ended without providing workers' normative rights. The company did not provide compensation rights in accordance with Article 62 of the Labor Law, which obliges employers who unilaterally lay off workers to pay compensation in the amount of workers' wages until the employment period ends, as for the provisions of Article 62 of the Labor Law, including:

If either party ends the employment contract before the specified period in the fixed-term agreement, or if the termination is not in accordance with Article 61(1), the employment relationship is terminated. The party ending the work contract must provide financial compensation to the other party equivalent to the employee's salary until the agreement comes to an end.

However, based on the Decision of the Supreme Court of the Republic of Indonesia Number 231 K/Pdt.Sus-PHI/2024 between Maria Antonia Gomez Fernandez and PT Dua Cahaya Anugrah, the decision has partially granted workers' rights, but this decision does not fully fulfil workers' rights. This shows a gap between the regulation (*das sollen*) in this case the Labor Law and its implementation in the field (*das sein*). This case shows that there is still much to be optimised regarding legal protection for workers, especially foreign workers.

The novelty of this research lies in the focus of discussing the basis of consideration and legal protection provided by judges against foreign workers based on a case study of the Supreme Court of the Republic of Indonesia's decision Number 231 K/Pdt.Sus-PHI/2024, which is a relevant and urgent issue in today's society, especially in labor cases. The study has been examined using three primary methodologies: the legal approach, case approach, and theoretical approach. By evaluating the factors considered by the judges and the legal safeguards offered in the ruling, fresh insights on the legal protection of overseas employees in Indonesia can be obtained. Consequently, this study has the potential to bring fairness to scholarly works and legal professionals in Indonesia, while also providing a foundation for suggesting enhancements in regulatory rules, particularly in the area of employment.

## **METHOD**

The method of inquiry utilised in this study is normative legal research. The main focus of the research is to explore the legal system as a collection of norms or regulations that govern behaviour within society and provide direction for individuals (Ishaq, 2017). The data collection technique applied in normative legal research is to collect relevant legal materials using library research techniques, namely analysing relevant rules, books, or scientific works. Literature studies have the aim of achieving theories, conceptions, opinions or findings related to the issues raised in this research proposal. In this regard, in order to build a solid research requires an in-depth understanding of various literature sources, which are obtained through literature

review. Literature review is a process of critically examining relevant research materials, then systematically detailing and analysing them deductively (Amiruddin & Asikin, 2004). This research technique uses a qualitative descriptive juridical method to reveal the meaning, context, and implications of the legal phenomena under study. Descriptive in the context of legal research is a data analysis approach that involves a detailed and accurate description of a phenomenon related to legal writing. In this case, the research is classified as normative legal research with a qualitative approach. The qualitative approach in legal research focuses on in-depth analysis of structured written sources. This is done by studying relevant legal theories and applicable laws and regulations to explain research problems logically, scientifically, and easily understood. Furthermore, the method or technique of concluding legal material applied is deductive, where conclusions are drawn from general to specific information in order to obtain clarity on a truth, so that the right explanation of the problem under study can be obtained.

## RESULTS AND DISCUSSION

Within the realm of law enforcement, judges play a crucial role across various levels, including the District Court, High Court, Supreme Court, and Constitutional Court. According to Article 1 point 1 of Law Number 48 of 2009 on Judicial Power, judicial authority is an autonomous state power tasked with administering justice to uphold the law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, in line with the implementation of the Rule of Law in the country. Historically, judges were viewed as mere interpreters of the law or mouth of the law (*la bouche de la loi*), obligated to strictly apply the law as written. However, in more recent times, judges have moved beyond this narrow scope and now interpret the law by delving deeper into its meaning through various legal interpretations to ensure the public's perception of justice is met.

Judges are not just law enforcers through the method of syllogism alone (mouth of the law), but judges are law finding and can form law (judge made law) that is fair and wise. Therefore, judges should not be bound only by the law in the sense of legislation that is laden with the domination of the interests of a strong minority (the ruler). Judges must be given freedom in carrying out their judicial functions, so that every case presented to them can really be decided accordingly in examining, trying and deciding cases presented to them, really decided fairly and wisely. Similarly, countries adhering to the Common Law system will have an influence on the independence of Judges as executors of judicial power who are always oriented towards Common Law (general custom) which is manifested through the jurisprudence of judges in judicial decisions. In its development, based on the results of research conducted by legal experts, the two legal systems have influenced each other in their implementation, so that there is no longer a strict distinction between the two legal systems in practice, which also affects the independence of Judges as executors of judicial power. This means that the judicial power system in countries adhering to Civil Law is no longer solely shackled to the codification system (Written Law), but rather open space to refer to unwritten law. Conversely, the Common Law system also opens itself to shift from the principle of precedent. The paradigm shift in the legal system opens up a wide space for Judges in carrying out the function of judicial power independently from the aspect of legal references that can be used as guidelines in deciding a case before them for fair and wise resolution (Suherman, 2019).

When judges make a decision, they need to take into account legal truth, ethical truth, and societal truth. Legal correctness entails ensuring that all relevant legal requirements have been met. Ethical truth requires judges to weigh the concept of justice and fairness when reaching a verdict. Societal factors must also be considered, as judges need to assess the potential negative consequences of their decisions on society as a whole. Ultimately, judges must strive to make fair and informed decisions that have a positive impact both legally and socially.

The judge's rationale or ratio decidendi is the factor taken into account by the judge in determining a case before making a decision (Al Hafiz et al., 2023). Judges' considerations arise because of changes in the Anglo-Saxon legal tradition with its system of Common Law that judges' decisions in one period can be binding in subsequent periods. The judge's consideration in looking at a problem must look at the existing social conditions so that it can be followed by the next judge in a similar case. The position of the ratio decidendi can be a reference to the basic logic in a case, the ratio decidendi underlies a decision, meaning that the ratio decidendi can be followed by other courts in the future. Therefore, the ratio decidendi has a strong position in determining legal interpretation and providing legal certainty. A clear and accurate ratio decidendi can provide clear guidance for the parties involved and can assist in the development and consistency of the legal system (Sulistiani et al., 2023).

The judge's decision is when the judge himself gives a statement, where the judge has a position or is serving as a state official. So that the judge clearly has the authority to give a decision on a case that is in trial. A decision can be used in terms of terminating a case or a dispute. Talking about the existence of a judge's decision which is well known as a court decision, it is very important to resolve criminal cases. So that the presence of this judge's decision, the parties who are litigating, namely the defendant, can obtain legal certainty regarding their status and can prepare what the next steps are to carry out appeals or cassations, make clemency and others (Sulistiani et al., 2023). In the case of industrial relations disputes experienced by TKA (foreign worker), namely the dispute that occurred between PT Dua Cahaya Anugrah (defendant and employer) unilaterally terminated Maria Antonia Gomez Fernandez (plaintiff and worker), based on the case the company unilaterally terminated before the term of the employment agreement ended. The case has been legally binding based on the Decision of the Supreme Court of the Republic of Indonesia Number 231 K/Pdt.Sus-PHI/2024.

The decision of the Supreme Court of the Republic of Indonesia examining a special civil case of industrial relations dispute at the cassation level has decided with Decision Number 231 K/Pdt.Sus-PHI/2024. Based on Decision Number 231 K/Pdt.Sus-PHI/2024 between Maria Antonia Gomez Fernandez and PT Dua Cahaya Anugrah in the section of its decision regarding workers' rights states as follows:

**Adjudicate:**

1. Grant the cassation petition of the Cassation Petitioner: Maria Antonia Gomez Fernandez;
2. Cancels the Decision of the Industrial Relations Court at the Denpasar District Court Number 13/Pdt.Sus-PHI/2023/PN Dps, dated 20 October 2023;

**Adjudicate Alone:**

1. In Convention
2. In Exception
  - a) Reject the Defendant's exception in its entirety;

**On the merits:**

1. Grant the Plaintiff's claim in part;
2. Declare the termination of the employment relationship between the Plaintiff and the Defendant since the decision was read out;
3. Punish the Defendant to pay the Plaintiff's rights to the Plaintiff in the amount of 14,875 USD paid in rupiah at the middle exchange rate in accordance with the provisions;
4. Punish the Defendant to pay the Plaintiff return money to the Plaintiff's home country in the amount of Rp25,000,000.00 (twenty five million rupiah);
5. Reject the Plaintiff's claim for other than and the rest; In Reconvention:
  - a) Reject the claim of the Plaintiff in Reconvention in its entirety.

**Punish the Cassation Respondent to pay court costs at the cassation level in the amount of Rp500,000.00 (five hundred thousand rupiah)**

The focus of this decision appears to be on ensuring that workers' rights are upheld, as outlined in Article 62 of the Labor Law Number 13 of 2003. This particular article states that if either party ends the employment contract prematurely, without valid reasons mentioned in Article 61 paragraph (1), the party responsible for the termination must compensate the other party with the worker's wages until the agreed-upon term ends. However, for other reasons, the plaintiff's claim cannot be accepted which results in the fulfilment of workers' rights.

However, in the Decision of the Supreme Court of the Republic of Indonesia examining a special civil case of industrial relations dispute at the cassation level has decided with number 231 K/Pdt.Sus-PHI/2024, the judge in this decision unfortunately considered the rights of workers who experienced unilateral termination of employment but in this decision the judge only granted part of the workers' rights while the rights of workers are very clearly written and recommended in the provisions of Article 62 of the Labor Law Number 13 of 2003, which deals with employment regulations, if one party ends the employment contract early or without valid reason, they must compensate the other party with the worker's full wages until the contract period expires. The judge only partially granted the worker's compensation rights in a recent case involving early termination of an employment agreement.

Labor legislation governs all issues pertaining to employment prior to, during, and following work. Protection acts as a safeguard mechanism in the shape of compensation that is not in the shape of incentives, whether given directly or indirectly, implemented by the employer for employees. This safeguard offers a feeling of assurance, not only in financial terms, but also in terms of healthcare and physical well-being for employees, enabling them to engage in their tasks effectively and contribute positively to enhancing the company's value. Labor protection is a must for companies that are required by the government through legislation. In implementing protection programmes, many companies work together with insurance companies that provide coverage against possible health, financial or other problems faced or experienced by workers and their families in the future. In practice, the quality of this protection is not the same for each worker, depending on their position and responsibilities (Suryani, 2018).

In accordance with Article 5 of the Labor Law Number 13 of 2003, all employees are entitled to fair opportunities for employment and a satisfactory income without discrimination based on gender, ethnic background, race, religion, or political beliefs, taking into account the individual's capabilities and interests, including fair treatment for individuals with disabilities (Zubi et al., 2021). Labor protection is a form of recognition of the rights of workers/laborers as human beings who must be treated humanely with consideration of their limited physical abilities. Labor protection also has principles in order to guarantee the rights to obtain work and decent livelihood. Labor protection is a form of recognition of the rights of workers/laborers as human beings who must be treated humanely as mandated by the 1945 Constitution Article 28D paragraph (1) by, 'guaranteeing legal certainty of protection and being treated equally before the law' and also paying attention to the principles of occupational safety and health in order to be able to carry out the production process and work productivity and be able to obtain a decent livelihood as humans (Mokoginta, 2022).

In terms of Legal Protection of Foreign Workers in Indonesia based on the Decision of the Supreme Court of the Republic of Indonesia Number 231 K/Pdt.Sus-PHI/2024 between Maria Antonia Gomez Fernandez and PT Dua Cahaya Anugrah, it can be seen in several points in the judge's consideration relating to legal protection, namely after carefully examining the cassation memory received on 14 November 2023 and the counter cassation memory received on 1 December 2023 connected with the consideration of the *Judex Facti* in this case the Industrial Relations Court at the Denpasar District Court there is an error in applying the law, with the following considerations:



1. Whereas the Judex Facti has considered the subject matter and has considered the evidence submitted by both parties, the absence of IMTA documents from the acknowledgement of the existence of documents as testified by Witness Nyoman Yenni Andayani does not cause the entire petitum of the lawsuit to be unacceptable (niet ontvankelijke verklaard);
2. That the Judex Facti should not consider the lack of evidence submitted by the parties but must decide based on what is obtained in the examination stage, especially the examination of evidence and witnesses and the judge must provide a sense of justice to the parties and must know about the law (ius curia novit principle);
3. That the Plaintiff, who is proven to be a Foreign Worker (TKA) with employment status based on the Specified Time Work Agreement (PKWT) and the Plan for the Use of Foreign Workers (RPTKA) from 8 August 2022 to 8 August 2023, has had his employment terminated by the Defendant since 16 December 2022 (4 months), therefore the Plaintiff is entitled to compensation in accordance with the provisions (vide Article 62 of Labor Law Number 13 of 2003 concerning Labor).

In the practice of labor law enforcement there are three parties that have an important role, namely the employer community, workers/laborers and trade unions/labor unions, and the government. Employers should strictly comply with all existing labor law provisions. It would be better if employers do not have to limit themselves from normative legal rules, but do and contribute with things that have positive value with quality above normative provisions. Although there are legal gaps or lacunae, employers must also take an active role in filling or completing them, not on the contrary because of the existence of legal gaps and gaps that are misinterpreted and utilised and even violated the spirit of legal justice. Likewise for workers/laborers, they must also obey the provisions of the applicable labor law. If workers/laborers can work and fight for their fate and obey the provisions of the law, it can be guaranteed that they will be in a safe position. Moreover, trade unions/labor unions must really function in fostering workers well, not becoming provocateurs. Furthermore, if employers deviate from the law, workers/laborers are expected to exercise control, through trade unions/labor unions-warning and suggesting improvements to employers. Legal protection is intrinsically linked to the function of law in regulating and safeguarding society's interests. According to Broin Malinowski's book 'Crime and Costum in Savege', law is not limited to resolving violent conflicts, but also governs everyday situations. The necessity of legal protection for employees stems from their vulnerable position in the workplace. It aims to uphold workers' fundamental rights and ensure fair treatment and opportunities without any form of discrimination for their well-being.

Legal protection can be categorised into two main types:

- a. Preventive legal protections are measures put in place by the government to deter crimes before they happen. These measures are outlined in laws to prevent crimes from occurring and to establish boundaries for fulfilling responsibilities.
- b. Repressive legal protection serves as a last resort that includes punishments like fines, jail time, and other penalties imposed after a crime has been committed or a dispute has arisen.

As a democratic country that upholds respect for human rights, the Indonesian government is obliged to provide legal protection not only to Indonesian citizens, but also to foreign citizens in Indonesia. In various national regulatory instruments, the Indonesian government always guarantees human rights. One form of legal protection for foreign nationals. A form of legal protection provided by the state to foreigners can be found in Article 77, where foreigners who are subject to immigration administrative measures can file an objection to the minister. This shows that every action or decision made by the government must be accountable and prevent any form of arbitrary action or decision that may be made by government officials that can cause harm to foreigners in Indonesia

Apart from safeguarding against immigration issues, the state offers legal protection to foreign individuals through governmental attitudes and actions. This is evident in various legal

documents enacted by the government, like Law Number 15 of 2009 concerning the Ratification of the Protocol against the Smuggling of Migrants by Land, Sea and Air, complementing the United Nations Convention Against Transnational Organised Crime, as well as Law Number 6 of 2012 regarding the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. These laws demonstrate the government's commitment to upholding human rights, specifically for foreign residents in Indonesia (Rumainur, 2018).

No matter where an individual is situated, including non-natives employed in Indonesia, they are now afforded legal protection under the International Convention on the Protection of the Rights of All Migrant Workers and their Families. This recognition ensures that foreign workers in Indonesia have their personal, legal, economic, and judicial rights upheld in accordance with human rights standards.

## CONCLUSION

The judge's decision in the Supreme Court of Indonesia Case Number 231 K/Pdt.Sus-PHI/2024 is rooted in Article 62 of the Labor Law Number 13 of 2003, as well as Article 20 of AB (General Provisions of Legislation for Indonesia). that 'Judges must decide cases based on the Law'. This means that in making a decision the judge must be based on the applicable laws and regulations so that legal certainty and a sense of justice can be achieved. Labor protection is a form of recognition of the rights of workers/laborers as human beings who must be treated humanely. In a state based on law (*rechstaat*), judicial power is a body that determines the content and strength of positive legal rules. The power of the judiciary is demonstrated through the process of analysing, evaluating and assigning worth to specific human actions, as well as resolving conflicts fairly and in accordance with the law as a neutral standard.

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