

**LABOR IN FOREIGN COMPANIES ASSOCIATED WITH THE
PRINCIPLES OF NATIONAL TREATMENT IN GATS / WTO
FRAMEWORK**

Desty Anggie Mustika and Amiludin

destyanggiemustika695429@gmail.com, tsamanytrans@gmail.com

**Faculty of Law Universitas Ibn Khaldun Bogor
Faculty of Law Universitas Muhammadiyah Tangerang**

Abstract

Since The Issuance Of Law No. 1 Of 1967 Concerning Planting Foreign Capital And Is Now Replaced By-Law No. 25 Years 2007 Regarding Investment There Are No More Foreign Companies Nationalized By The Government And There Is A Political Promise Of The President Who Guarantee There Will Be No Nationalization Of Foreign Companies In Indonesian Regional Foreign Investment Forum. Although There Is Protection Nationalization Of Foreign Companies There Are Various Government Policies For The National Interest, One Of Which Is By Requiring Foreign Companies To Use Local Labor Which Can Be Called The Indonesianization Of Labor In The Company Foreign Law Contained In Act Number 13 Of 2003 Concerning Employment Article 43 To 49. Indeed This Is Indonesia's Sovereignty To Protect Its Domestic Interests Especially The Rights Of Its Citizens To Get Jobs, But Within Indonesia's International Trade In Services Must Comply Various Agreed International Regulations Listed In The GATS / WTO, Whether Indonesianization Of Workers In Foreign Companies This Is Following The Principle Of National Treatment In GATS And Whether This Government Action Is Following The Provisions In The GATS / WTO. By Conducting Descriptive Analytical Research With Methods Normative Juridical Approach, The Author Will Examine Various Regulations National Legislation Related To The Use Of Labor In Foreign Companies And Compare Them Whether This Is Following Existing International Agreements, Especially Within The GATS / WTO. The Results Of This Study Indicate That The Indonesianization Of Workers In Foreign Companies Does Not Violate The Principle Of National Treatment GATS Due To Indonesianization Of Labor Also Applies In Companies Domestic. Indonesianization Are Energy Absorption Processes Local Work In A Foreign Company As A Way Of Dealing With It Globalization Of Trade In Services Contained As One Type Services That Have Been Regulated In GATS Are Commercial Presence.

Keywords: Indonesianization of Labor, National Treatment, GATS / WTO

INTRODUCTION

Globalization has become a way of life for the nation in every country that currently wants a good experience and can face the world's rapid development. At the moment, no government can meet the needs of its people only by depending on the results of its own country. (Mubah, 2011; Pamungkas, 2016) Moreover, with the advancement of technology and information, it

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seems as if there are no longer boundaries of state sovereignty. This is what causes globalization throughout the world. (Dreher et al., 2008; Long & Quek, 2002)

At present, to accommodate globalization in the field of international trade and economy, the World Trade Organization (WTO) was formed in 1994, which regulates explicitly trade between countries in the world and promotes trade liberalization. (Hoekman & Mavroidis, 2015; Van den Bossche, 2008) WTO is the successor agency to the General Agreement on Tariffs and Trade (GATT), which regulates more about trade in goods, such as liberalization in natural resources, tropical products, agricultural products, textiles, and clothing. (Wilkinson, 2013; Wohlmeyer & Quendler, 2017) Meanwhile, international arrangements to accommodate trade liberalization in the service sector are regulated in the General Agreement on Trade in Service (GATS), which is under the WTO organization. GATS has several vital principles and is a fundamental basis for the implementation of the liberalization process of trade in services in this international agreement, namely the principles of most-favored-nation (MFN) and national treatment. (Santoso, 2017; Yulianto, 2017)

Most-favored nation (MFN) is a general obligation stipulated in Article II of the GATS, which applies to all types of services. Article II of the GATS is a provision that requires equal treatment (no less favorable) to all WTO member countries. (Ananda & Ramlan, 2020; Yanti, 2018) MFN, also known as the principle of non-discrimination, is a general obligation under GATS. This obligation is immediately and automatic (unconditionally). The second principle that becomes the primary basis for the liberalization of trade in services in this international agreement is the principle of national treatment. National treatment is regulated in Article XVII GATS. (Satriana, 2016; Van den Bossche, 2008)

This principle requires a country to treat the same laws that apply to foreign goods, services, or capital that has entered its domestic market with the laws that apply to products or services made in the country. (Khaidir Anwar, 2014) If it is related to the state of the Indonesian economy, the existence of globalization or free trade based on GATS causes competition for Indonesian workers not only to fight for job market opportunities abroad but also to fight for labor market opportunities in the country, especially when viewed from a quality perspective

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where there is a possibility of labor.(Nasution, 2009; Utama, 2012) Existing work in the country will be filled by foreign workers who are better and more competent. It can be said that the performance of the Indonesian nation will very much depend on its human resources, no longer on natural resources, which have been a comparative advantage. In fact, for a developing country like Indonesia, the main effect of liberalization of trade in services has not put local and foreign companies in a balanced position.(Wade, 2003)

This is because transnational companies have more substantial technological and economic resources than local companies. Because the service sector is crucial for the economy of each country, a developing country like Indonesia must prepare policies as well as mechanisms to regulate service activities because this is a very high stake.

One of the methods that have been used by the Indonesian side to solve this economic problem is by making various laws and regulations to legalize the nationalization of Dutch companies. (Alam, 2015; Ferliadi, 2015) Some of these laws and regulations, namely Law Number 24 of 1951 concerning the Nationalization of De Javasche Bank NV, Law Number 86 of 1958 concerning the Nationalization of Dutch Companies, Government Regulation Number 2 of 1959 concerning the Principles of Implementing the Law on the Nationalization of Dutch Companies, Government Regulation of the Republic of Indonesia Number 35 of 1960 concerning the Nationalization of N.V. "Semarangse Stoomboot En Prauwen Vee (S.S.P.V.)" And N.V. "Semarang Veer." However, the government argued that the nationalization would only bring harm because of the lack of Indonesian professionals, and such actions would only make it difficult for foreign capital to enter, so the Indonesian government issued Law Number 1 of 1967 concerning Foreign Investment. Nationalization is also felt to have a sustainable effect because the Indonesian side must provide appropriate compensation for the foreign company, which is nationalized following the principles of prompt, adequate, and effective payment. (Abdullah, 2014; Aminuddin Ilmar, 2010)

Efforts to protect the interests of the state did not end with the question of nationalization. Furthermore, there is a government policy to protect national interests by requiring foreign companies to use local products and labor, which can be referred to as Indonesianization.

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We can see the form of government policies that protect local workers in Law Number 13 of 2003 concerning Manpower (from now on referred to as Law Number 13 of 2003), namely Article 43 to Article 49, where Indonesia allows the entry of foreign workers in foreign companies. The involvement of Indonesian workers is contained in Law Number 13 of 2003 Article 45 paragraph (1). Here it can be seen that the government provides protection to local workers by requiring foreign companies to employ local workers to work in their companies (foreign companies), both to assist expatriate workers and provide education and training to local workers. In short, the Indonesian government is trying to take action Indonesianization of workers in foreign companies. (Harjono, 2012; Sukananda & Mudiparwanto, 2020)

When viewed from the principles of international economic law, especially the principle of national treatment, which is also one of the directions in the GATS / WTO, this government action can be said to constitute discrimination against foreign investors. It is said to discriminate or not apply national treatment because foreign investors are required to employ local workers to work in their companies (foreign companies), both to assist expatriate workers, provide education and training to local workers, which are not obligatory for the growers domestic capital. The government's action with the intention of Indonesianizing workers in foreign companies will undoubtedly result in polemics. If it is raised by a party as a dispute, of course, it will result in problems in the economic field.

Also, with the enactment of Law Number 13 the Year 2003 Article 45 paragraph (1), local workers required by foreign companies may not comply with the prerequisites needed by them and cause the foreign company to be unable to operate. Of course, this can lead to the withdrawal of various foreign investors or investors into the country, even though it has been explained above that Indonesia desperately needs foreign investors.

By researching the Indonesianization of the workforce, we will find out what the actual legal status is in the local employment absorption system in foreign companies that currently exist. Besides, by conducting this research, it can answer the problem if there is a dispute between foreign investors and the Indonesian government in terms of employment in foreign companies by explaining the legal status of the Indonesianization of workers in foreign companies.

METHODOLOGY

This research is structured using the type of normative legal analysis (Legal Research). Legal analysis is research that is focused on studying the application of the rules or norms in positive law. (Ibrahim, 2006) According to Peter Mahmud Marzuki, "Normative legal research is research that has a character prescriptive by using coherence between legal norms, principles law, as well as a legal doctrine, to answer legal issues that are being faced." (Marzuki, 2010)

The problem approach method used in the preparation of this study, namely the statutory approach (statute approach), and the conceptual system (conceptual approach). To solve legal issues in this legal journal, analyzed research sources, including traditional primary materials and secondary standard materials. Primary legal material is a regular material that is authoritative or has authority consisting of basic norms such as legislation, official records, or minutes in the making of legislation, as for secondary material in the form of all publications about the law are not official documents. Publications on law include legal magazine textbooks, standard and non-legal journals from both national journals and internationally, the results of scientific research papers written in seminar papers, theses, dissertations, articles, and news from websites and portals credible. (Soekanto & Mamudji, 2010)

RESULT AND DISCUSSION

National treatment is a principle of international economic law. This principle requires the same treatment of foreign business actors as domestic business actors, both rights, obligations, and state protection between the two business actors. This is done in order to create free trade and reduce discrimination in terms of current work.

In GATT, this principle is regulated in Article III of GATT 1994, which requires that a country is not allowed to discriminate between imported products and domestic products (the same effect) to provide protection. In GATS, national treatment or national treatment is regulated in Article XVII GATS.

Based on this Article, the application of national treatment is different from the national

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treatment implemented in GATT. In GATT, the regulation only concerns that a country is not allowed to discriminate between imported products and domestic products (the same effect) to protect domestic products, while in GATS, the application of national treatment in GATS can only be implemented in the service sector / sub-sector. That has been committed or has been approved to be opened in the Schedule of Specific Commitments as a service trade open to foreign parties. It can be concluded that the principle of national treatment in GATS can work, where foreign business actors get the same rights, obligations and protection as domestic business actors, if there are service sectors / sub-sectors that have been committed or have been set open to foreign parties.

In connection with the Indonesianization of workers in foreign companies, acts of Indonesianization of workers do not only occur in foreign companies but also happen in local companies that will employ foreign workers. This is based on Law Number 13, the Year 2003 Article 45 paragraph (1). Based on the article above, there is no difference between domestic investors (domestic companies) and foreign investors (foreign companies), both of which are referred to as employers. Both of them have the same obligations under Article 45 paragraph (1) of Law Number 13 of 2003 if they are to employ foreign workers, namely (a) appointing Indonesian citizens as companions and (b) providing education and job training. Guarantee of equal treatment for domestic and foreign investors is also stated in Law Number 25 of 2007 concerning Investment Article 6 Paragraph (1).

With the guarantee of equal treatment for domestic and foreign companies, the process of the Indonesianization of workers can be carried out without violating and following the principles of national treatment in GATS.

The government's actions in terms of the Indonesianization of workers in foreign companies based on Law Number 13 of 2003 have the aims and objectives, one of which is to absorb local workers in foreign companies. In GATS, the Indonesianization system of workers in foreign companies, which is based on Article 10 paragraph (1) and paragraph (4) and Article 45 paragraph (1) in Law Number 13 of 2003 concerning Manpower, is a government action against globalization of trade. Services, one of which is listed in GATS as a mode of supply or

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types of services for the commercial presence or commercial presence.

If it is related to the situation in Indonesia, then the form of commercial presence service type based on GATS is a foreign company that opens a branch company, joint venture, or partnership in Indonesia that supplies services such as foreign oil companies, foreign insurance companies, foreign financial consulting companies, etc. which will bring in foreign workers either from their home country or other countries and also need or open jobs for local workers. This is where the Indonesianization of labor appears, which is the obligation of foreign parties to employ local workers based on Law Number 13 of 2003 Article 10 and Article 45 paragraph (1).

The Indonesianization of workers in foreign companies, which is contained in Article 10 paragraph (1) and paragraph (4) and Article 45 paragraph (1) in Law Number 13 of 2003 concerning Manpower, is a government effort to encourage foreign companies to employ local workers, not only as laborers but also accompanying foreign expert workers brought or used by foreign companies. The main objective of the government's action to Indonesian workers in foreign companies is to absorb local workers and transfer technology directly by foreign parties by conducting various training following the mandate of Article 45 paragraph (1) letter b of Law Number 13 2003 year.

The implementation of the Indonesianization of the workforce proves the credibility of the Indonesian government in the eyes of the international community where the Indonesian government has protected and exercised the economic rights of its citizens, namely the right to work following Article 6 of the ICESCR (The International Covenant on Economic, Social and Cultural Rights) by providing access to local workers can enter into foreign companies.

Another purpose of the Indonesianization carried out by the government is to prevent the domination of foreign workers in foreign companies operating in Indonesia by requiring these foreign companies to employ Indonesian workers. The next goal of the Indonesianization of the workforce is to eliminate the concerns of developing countries like Indonesia against the domination of developed countries in the international economic system. This is because most patents and technology belong to multinational companies that have the largest shares in world

investment and trade while developing countries are only users of capital and technology from developed countries, as well as providers of raw materials and labor.

CONCLUSION

The Indonesianization of workers in foreign companies does not violate the principle of national treatment in GATS because the obligation to employ local workers and conduct training for local workers is not only required for foreign companies but also domestic companies. This is evidenced by the absence of differences in obligations and the same designation as employers between domestic and foreign companies based on the scope of Law Number 13 of 2003 Article 45 paragraph (1) and government guarantees to treat the same rights and obligations for both parties based on Law Number 25 of 2007 concerning Investment Article 6 Paragraph (1). The government's action to Indonesianize workers in foreign companies based on Law Number 13 of 2003 by GATS is a natural thing, because this is a government action against the globalization of trade in services, one of which is listed in GATS as a mode of supply or type-type of service for the commercial presence or commercial presence. Retail presence, where the fact of a foreign company is a service supplier in a country and also requires the local workforce.

More specific protection is needed for local workers. They work in foreign companies that open branches in Indonesia, especially laws and regulations relating to the obligation for foreign companies to open access to information and technology that they bring into Indonesia. The need for international legal arrangements related to the Indonesianization process so that a foreign company has more elements on which the company is built. For example, the Indonesianization method in Indonesia can be used as a reference so that each country, especially developing countries, can advance and improve. The condition of the economy, so that there is no longer the nationalization of a foreign company in a country which causes the relationship between the two countries to become tenuous.

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