

**PENGUNAAN TENAGA KERJA ASING BERDASARKAN UNDANG-  
UNDANG NOMOR 13 TAHUN 2003 TENTANG KETENAGAKERJAAN  
PADA PERUSAHAAN SWASTA (STUDI KASUS PUTUSAN  
NOMOR 1/PDT.SUS-PHI/2016/PN DPS)**

**ZULFAKRI**

**ABSTRAK**

Penelitian ini dilakukan untuk persyaratan memperoleh gelar magister hukum dengan judul Penggunaan Tenaga Kerja Asing Berdasarkan Undang-undang nomor 13 tahun 2003 tentang Ketenagakerjaan pada Perusahaan Swasta studi kasus putusan nomor 1/PDT.SUS-PHI/2016/PN DPS. Permasalahannya adalah bagaimana pengaturan hukum tentang penggunaan tenaga kerja asing berdasarkan Undang-undang nomor 13 tahun 2003 tentang Ketenagakerjaan dikaitkan dengan putusan nomor 1/PDT.SUS-PHI/2016/PN DPS, dan bagaimana implementasi aturan penggunaan tenaga kerja asing pada perusahaan swasta dikaitkan dengan putusan nomor 1/PDT.SUS-PHI/2016/PN DPS.

Pada penelitian ini penulis menggunakan 2 (dua) teori hukum diantaranya: 1) teori keadilan hukum dan 2) teori kepastian hukum. Metode penulisan Tesis ini adalah Yuridis Normatif dan sosiologis empiris dengan menggunakan bahan hukum primer, bahan hukum sekunder dan bahan hukum tertier yang di analisis secara Kualitatif. Selanjutnya di analisis secara induktif dan deduktif.

Hasil penelitian dinyatakan bahwa pengaturan hukum di dalam undang-undang nomor 13 tahun 2003 tentang ketenagakerjaan khususnya tenaga kerja asing sudah cukup baik dengan memenuhi rasa keadilan dan kepastian hukum yaitu setiap perusahaan yang akan menggunakan tenaga kerja asing wajib memiliki rencana penggunaan tenaga kerja asing yang disetujui oleh menteri dan setiap tenaga kerja asing wajib memiliki izin kerja dan izin tinggal yang dikeluarkan oleh kementerian tenaga kerja dan kementerian hukum dan hak asasi manusia. Namun dalam tataran implementasinya masih ditemui permasalahan tenaga kerja asing seperti penghapusan beberapa persyaratan penggunaan tenaga kerja asing, masih adanya tenaga kerja asing yang bekerja sebelum perizinannya dilengkapi, belum terimplementasikannya kewajiban alih keahlian dan alih teknologi dari tenaga kerja asing kepada tenaga kerja Indonesia pendamping dengan baik. Faktor yang menjadi kendala dalam penerapan peraturan terhadap tenaga kerja asing kurangnya pengawasan dari instansi terkait dalam penerapan aturan bagi tenaga kerja asing.

Keywords: tenaga kerja asing, nomor 1/PDT.SUS-PHI/2016/PN DPS.

# **EMPLOY OF FOREIGN WORKERS BASED ON LAW NUMBER 13 OF 2003 CONCERNING EMPLOYMENT IN PRIVATE COMPANY (CASE STUDY OF COURT DECISION NUMBER 1/PDT.SUS-PHI/2016/PN DPS)**

**ZULFAKRI**

## **ABSTACT**

*This research was conducted for the requirements of obtaining a master's degree in law with the title of Employ of Foreign Workers Based on law number 13 of 2003 concerning Employment in Private Company case studies of court decision number 1 / PDT.SUS-PHI / 2016 / PN DPS. The problem is how the law was regulated regarding the employ of foreign workers based on Act number 13 of 2003 concerning Employment which related to the court decision number 1 / PDT.SUS-PHI / 2016 / PN DPS, and how the implementation of the rules on the employ of foreign workers in private company in associated with court decision number 1 / PDT.SUS-PHI / 2016 / PN DPS.*

*In this research the author uses 2 (two) legal theories which are: 1) legal justice theory and 2) the theory of legal certainty. The method in writing this thesis is juridical normative and empirical sociology by using primary legal materials, secondary legal materials and tertiary legal materials which are analyzed qualitatively. Furthermore, it's analyzed inductively and deductively.*

*The results of the study stated that the legal arrangements in law number 13 of 2003 concerning employment especially foreign workers, were good enough to fulfill a sense of justice and legal certainty, which is every company would like to employ foreign workers must have a plan to use foreign workers and approved by ministers, on the other hand every foreign workers must have work permits before start to work and residence permits issued by the ministry of labor and ministries of law and human rights. However, at the level of implementation of the rules there are still problems with foreign workers, such as the elimination of some requirements for the use of foreign workers, there are any of foreign workers who work before their licenses are completed, the implementation of the obligation to transfer of knowledge and transfer of skill from foreign workers to Indonesian workers is not running well yet. The Factors of obstacles in the application of regulations to foreign workers are lack of supervision from relevant agencies in the application of rules to foreign workers.*

Keywords: foreign workers, number 1 / PDT.SUS-PHI / 2016 / PN DPS.