

POLICY BRIEF (APRIL 2021)

**GOVERNMENT ENACTS MORE STRINGENT REQUIREMENTS FOR FOREIGN
WORKER EMPLOYMENT**
A CLOSER LOOK AT GOVERNMENT REGULATION NO. 34/2021

1. **Background**

Foreign Workers (*Tenaga Kerja Asing* or TKA, “**Foreign Workers**”) are foreign citizens holding a valid visa to live and work in Indonesia. Employers who plan to and/or are currently employing foreign workers are required to have a Foreign Worker Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing* or RPTKA, “**FWUP**”). This is regulated under Government Regulation No. 34 of 2021 (“**GR No. 34/2021**”), an implementative regulation of Law No. 11 of 2020 on Job Creation (“**Job Creation Act**”) and Law No. 13 of 2003 on Manpower (“**Manpower Law**”), the principle legislation governing employment and industrial relations. GR No. 34/2021 revokes Presidential Regulation No. 20 of 2018 on the Use of Foreign Workers (“**PR No. 20/2018**”), thus setting it as the primary implementative regulation on the employment of Foreign Workers under the Manpower Law.

There are several key aspects found under GR No. 34/2021, including the type of Employers requiring a FWUP, new procedures for acquiring it, and documents required to obtain approval of the FWUP from the Ministry of Manpower. FWUP is a prerequisite if an employer is planning to ‘sponsor’ a work visa for foreign workers.

Summary of Key Issues

No.	Issues	Regulation	Notes
1	Employers Exempted from FWUP Obligation (Article 9-11 GR No. 34/2021)	A. Shareholding members of a board of directors or commissioners; B. Foreign diplomatic officials; or C. Foreign workers hired under emergency situations, for work of a vocational nature, for work in a technological start-up company, or their reasons for being in Indonesia being business visits/research	Employers in point C are new types of employers that are exempted from FWUP Obligation.

2	Additional Documents Required	There are 7 types of documents required in filing an FWUP, where previously only 5 were required. Presently, work agreements or other agreements, and foreign workers' or foreign workers employer's bank statements/savings accounts must also be included within the application.	Previously, under PR No. 20/2018, employers are only required to attach business license documents, deeds of establishment and its amendments, company organizational structure, and statement letters (Article 7 (4) PR No. 20/2018.
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2. Employers of Foreign Workers requiring FWUP

Employers requiring an FWUP include:

- a. Government institutions, foreign consulates/embassies, and international bodies;
- b. Foreign representative offices and news agencies operating in Indonesia;
- c. Any private company operating in Indonesia;
- d. Legal entities (limited liability companies or foundations) established under Indonesian law;
- e. social, religious, educational, and cultural institutions;
- f. Sports, arts, and entertainment promoters; and
- g. Other business entities allowed under law.

Exempted from the FWUP rule are (Art. 19(1) GR No. 34/2021):

- a. Shareholding members of a board of directors or commissioners;
- b. Foreign diplomatic officials; or
- c. Foreign workers hired under emergency situations, for work of a vocational nature, for work in a technological start-up company, or their reasons for being in Indonesia being business visits/research.

3. Obligations and Prohibitions for Employers

Non-exempted Employers have the obligation. Moreover, the obligations that must be followed by employers are (Article 6-8 GR No. 34/2021):

- (i) possess an FWUP;
- (ii) employ Foreign Workers based on FWUP approval;
- (iii) appointing an Indonesian employee as a counterpart for technology and knowledge transfers;
- (iv) carry out education and job training for Indonesian counterparts in accordance with the qualification of FWUP;
- (v) repatriate Foreign Workers to their countries of origin after the work agreement ends;
- (vi) facilitate Foreign Workers for learning Bahasa Indonesia; and
- (vii) enroll Foreign Workers in national social security or insurance program.

An Employer may not employ Foreign Workers (Article 9-11 GR No. 34/2021):

- (i) if their business is a sole proprietorship;
- (ii) in more than one position in the same company; and/or
- (iii) employ foreign workers in human resources/personnel positions.

4. Documents Required for FWUP Application

An Employer may file an application to the Ministry of Manpower for an FWUP under the following categories (Article 16-17 PP No. 34/2021):

- (i) temporary positions FWUP;
- (ii) FWUP for positions with a duration of 6 months or more;
- (iii) Non-compensated FWUP (if the petitioning Employer is a government institution, foreign consulates/embassy, international bodies, religious institutions, and certain positions within educational institutions); and
- (iv) FWUP for employment in a Special Economic Zone (*Kawasan Ekonomi Khusus*).

Employers must first obtain an FWUP that has been approved by the Minister of Manpower or by an appointed official in order to employ Foreign Workers (Article 6 section (1) and 12 section (1) GR No. 34/2021).

In filing an FWUP application, the Employer must provide the following information (Article 12 section (2) GR No. 34/2021):

- (i) the employer's identity;
- (ii) reasons for the employment of Foreign Workers;
- (iii) positions where Foreign Workers will be assigned in the company;
- (iv) number of Foreign Workers
- (v) employment period of Foreign Workers;
- (vi) Location where Foreign Workers will be employed;
- (vii) the identity of the local counterpart; and
- (viii) plans to employ Indonesian workers.

The following documents should be attached in the application (Article 12(3) GR No. 34/2021):

- (i) business identification number (*Nomor Induk Berusaha*—"NIB") and/or business license;
- (ii) deed of establishment and amendments thereof;
- (iii) employment reports as delivered to the Ministry of Manpower;
- (iv) draft of employment agreements or other agreements;
- (v) company organizational structure; and
- (vi) letter of statement regarding the appointment of Indonesian workers to accompany Foreign Worker in question, providing knowledge transfer according to their qualifications, and commitment to educate the Foreign Worker in the Indonesian language.

The requirements under GR No. 34/2021 are more extensive; under PR No. 20/2018, employers are only required to attach business license documents, deeds of establishment and amendments, company organizational structure, and statement letters (Article 7 section (4) PR No. 20/2018).

5. **FWUP Approval Process**

The process of obtaining approval for a FWUP application, involves two steps:

1. filing the application as provided above; and
2. the assessment of the application by the Ministry of Manpower. During the second step, the Ministry of Manpower and the Employer will exchange notices, extend requirements, and other documentation needed, such as relevant data, to be verified. Upon the completion of said documents, the Employer fulfils [DKPTKA], where afterwards the ministry will issue an approval, which becomes the basis of future visa sponsorship (Article 13-14 GR No. 34/2021).

6. **Reporting, Guidance, and Supervision**

Once a Foreign Worker is employed, Employers are required to provide annual reports to the Minister of Manpower, which must include statements on their functions, education, training, as well as knowledge transfer responsibilities. Supervision of Foreign Workers is carried out by both Ministry of Manpower and immigration enforcement officials (Article 32-35 GR No. 34/2021).

7. **Sanction**

Employers who violate this regulation, including the non-possession of a FWUP, illegal employment of foreigners, etc. shall be subject to fines ranging between Rp6.000.000,- to Rp36.000.000,-, temporary suspension of FWUP applications, and/or revocation of an approved FWUP (Article 37(2) GR No. 34/2021).

8. **Conclusion**

The enactment of GR No. 34/2021 entails stricter and more stringent requirements for the employment of foreign workers in Indonesia, especially in comparison to PR No. 20/2018, especially on the documentation and planning requirements for their employment. Accordingly, the government attempts to ensure that foreign workers employed are highly-qualified, while protecting the local job market, one of the primary purposes of the Job Creation Act.

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