Law on state management of foreign workers in Vietnam, current situation and solutions

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Abstract
Countries are opening doors for international integration in the current context of globalization. The labor market becomes highly competitive and requires management due to the strong impact of migration from one country to another on economic and social development. The Party and State in Vietnam have been paying attention to managing foreign workers through a legal document system. The management of foreign workers in Vietnam has been addressed by the Party and State through a system of legal documents. This article focuses on analyzing the current legal situation regarding state management of foreign workers and proposes a number of measures to improve the law.

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1. Introduction
During the period of international economic integration, employers are free to recruit workers, and workers are free to find jobs in different working environments, which leads to workers being unemployed. Actively search for places with suitable job opportunities. The expansion of the international economy has formed a new market, the international labor market. Each country can send its own workers abroad to work, and at the same time can accept foreign workers to work in its country. In Vietnam, state management of foreign workers has been paying attention by the Party and State through a system of legal documents. Especially in the 2013 Constitution, the legal regime of outsiders has been defined through rights and obligations for everyone. For the first time, a number of rights were stipulated only for Vietnamese citizens, now foreigners can also enjoy these rights. This regulation has shown progress after more than 30 years of development and integration. However, besides the achieved results, the law on management of foreigners still has some shortcomings that affect foreign investment capital. At this time, perfecting the law on foreign worker management in Vietnam is very necessary.

2. Vietnamese legal regulations on state management of foreign workers in Vietnam
2.1. Characteristics of state management of foreign workers in Vietnam
State management of labor in general or state management of foreign labor in particular is understood as management activities conducted by competent entities within the state apparatus. It can be seen that state management of foreign labor is a specific activity of state management, because labor is a field that is both economic and social. Foreign workers are a special subject and the use of foreign workers is subject to coordinate management of different competent state agencies. As the subject holding the general power of society, the state holds the highest responsibility in organizing socio-economic activities, including labor management. The State promulgates legal regulations as a basis for managing and supporting the process of establishing and operating labor relations, and at the same time plays an intermediary role in resolving conflicts and contradictions arising from labor relations. Labor system. Subjects of state management of foreign workers are foreign workers, employers, organizations and individuals directly employing workers, and management boards of industrial parks with foreign workers.
Outside of work. Because foreign workers have unique characteristics different from domestic workers, state management of foreign workers has the following unique characteristics:  

First, foreign labor management is directly related to the protection of human rights. The state needs to ensure equal treatment of foreign workers as domestic workers. The state management process needs to ensure basic human rights for foreign workers related to working conditions and employment conditions such as employment, wages, labor, safety, and employee safety. Social life.  

Second, foreign labor management is deeply international. With growing international integration and participation in many new generation free trade agreements, it has facilitated the opening of the labor market, leading to an increase in the number of foreign workers entering Vietnam. Work is increasing day by day. This will entail stricter commitments in the labor sector that we need to comply with, and complexity when resolving arising disputes is inevitable. The state management process for foreign workers needs to develop policies to contribute to strengthening international cooperation between countries, promoting investment and expanding markets for goods and services between countries. Countries.  

Third, managing foreign workers working in Vietnam is a process that requires close coordination between many industries, localities and subjects in labor relations. Foreign workers eligible to work in Vietnam can work, reside, travel and carry out transactions in all localities throughout the country and they can participate in many labor relations. Different movements. There are many issues that are raised and need to be strictly managed such as: entry, exit, residence, work permits, working conditions and employment, employment, education, health care, and public health. Union, social insurance, security, order... Therefore, state management agencies for foreign workers need to coordinate with each other to carry out appropriate functions, tasks, and powers with each specific characteristic of state management activities towards foreign workers.  

2.2. Content of state management of foreign workers in Vietnam  
The content of state management of foreign workers includes tasks and tasks that the state must perform according to its functions, expressed in the following contents:  

Firstly, about the subject of foreign worker management. According to the law, state management agencies for foreign workers in Vietnam include: Government; Ministry of Labor, War Invalids and Social Affairs; Ministries and ministerial-level agencies implement and coordinate with the Ministry of Labor, War Invalids and Social Affairs; People's Committees at all levels.  

Second, about the conditions for recruiting foreign workers. Foreign workers who want to work in Vietnam need to meet the conditions specifically stipulated in Article 151 of the 2019 Labor Code and Clause 1, Article 2 of Decree 152/2020/ND-CP, including regulations on related issues. Topics: behavioral capacity, health, professional qualifications, criminal record (no criminal record, no criminal record, no criminal prosecution or currently serving a criminal penalty), work permit approved by the receiving country.  

Third, on measures to manage foreign workers. Currently, the most popular method of managing foreign workers is through work permits. Work permits are issued to foreign workers for a certain period of time, based on the job, tied to a specific employer. Work permits are considered a condition for foreign workers to work and are also the basis for the state to manage foreign workers.  

Fourth, on handling violations in foreign labor management. Because of the complex and diverse nature of foreign labor management, central and local state management agencies need to coordinate to monitor and inspect the situation of foreign workers working in localities. And provide solutions when violations arise, to ensure that foreign workers comply with their obligations to the business and comply with the laws of the country where they work.  

3. Current state of state management of foreign workers in Vietnam  
By the end of 2023, the total number of foreign workers in Vietnam is approximately 136,800 people. Of which: there are more than 10,000 workers not subject to work permits, nearly 126,000 workers subject to work permits (including 91,974 newly issued workers, 15,875 renewed workers, over 10,000 workers reissued, and more than 8,000 workers are completing work permit applications) [1] .  

3.1. In recent years, state management of foreign workers working in Vietnam has achieved some results as follows:  
Firstly, the system of legal documents on the management of foreign workers in Vietnam has been and is being completed: The 2012 Labor Code and documents guiding the implementation of the 2012 Labor Code have revealed a number of limitations related to the management of foreign workers working in Vietnam. Realizing those shortcomings, our State has issued the 2019 Labor Code, effective from January 1, 2021. This is a solid legal corridor for the management of workers in general and the management of foreign workers working in Vietnam in particular. Strengthen the responsibility of state management agencies regarding foreign workers, ensure that activities are in the spirit of respect for the law, and enhance the effectiveness and efficiency of state management activities. The 2019 Labor Code regulates the rights and obligations of foreign workers when working in Vietnam with contents such as wages, social insurance, conditions for foreign workers to work in Vietnam.  
Affairs promulgating regulations on the minimum amount of knowledge and capacity requirements that learners achieve after graduation. Intermediate level, college level in technical fields and occupations. This Circular guides the issuance of work permits to foreigners in Vietnam and the necessary conditions and requirements for work. This has overcome the situation where employers, especially foreign contractors, take advantage of the lack of clear consensus on what constitutes highly qualified and specialized labor recruit unskilled foreign workers. Working in positions where Vietnamese workers should still meet the requirements.

Thus, the system of documents regulating the management of foreign workers in Vietnam has been increasingly improved, overcoming existing limitations and gradually strictly managing related activities. Bringing foreigners to work in Vietnam, ensuring security, order, social, safety and socio-economic development of Vietnam.

Second, through the 2019 Labor Code, our State has clarified the issue of signing labor contracts for foreign workers working in Vietnam. Something that the 2012 Labor Code previously did not have provisions for, leading to a number of difficulties and obstacles for judicial agencies and parties in resolving labor disputes with foreigners, typically Judgment No. 640/2018/LD-PT dated June 28, 2018 of the People's Court of Ho Chi Minh City. Thus, Clause 2, Article 151, Labor Code 2019 stipulates that the term of labor contracts for foreign workers working in Vietnam must not exceed the term of the Work Permit. When using foreign workers to work in Vietnam, the two parties can agree to enter into multiple, fixed-term labor contracts. The conversion of indefinite-term labor contracts at Point c, Clause 2, Article 20, Labor Code 2019 will not apply to foreign workers working in Vietnam. In addition, by stipulating that the term of labor contracts for foreigners working in Vietnam must not exceed the term of the Work Permit, the authors find this to be an effective solution for management. Strictly use foreign workers to work in positions that Vietnamese people can do, limit the indiscriminate use of foreign labor by businesses and contractors.

Third, on determining the subjects of labor contracts for foreign workers working in Vietnam. Previously, the 2012 Labor Code did not clearly stipulate this issue and created a gap in determining the subjects of labor contracts with foreign elements. To overcome this problem, Clause 1, Article 151 of the 2019 Labor Code clearly stipulates: foreign workers working in Vietnam are people with foreign nationality and must ensure the conditions according to the Ministry. This law stipulates. Thus, foreigners who want to work in Vietnam must first have foreign citizenship. Foreigners without citizenship are automatically not allowed to work in Vietnam. This ensures the rights and responsibilities of employers towards foreign workers working in Vietnam, enhancing the effectiveness and efficiency of management of state management agencies.

3.2. Some limitations in state management of foreign workers working in Vietnam are as follows

Firstly, violations in the management and issuance of work permits for foreigners. In recent years, since the 2019 Labor Code took effect, the management of foreign workers working in Vietnam has been tightened by competent authorities. However, in some localities there are still violations in the management and issuance of work permits for foreign workers. Typically in Da Nang city, according to...
Department of Labor, War Invalids and Social Affairs of Binh Duong province said: "It is due to some difficulties in personnel, as well as problems in the process of implementing the Decree. Decree 70/2023/ND-CP has resulted in the handling of administrative procedures regarding foreign workers being slow, at least 2 to 5 days behind regulations."; "The causes leading to delays in granting permits to foreign workers, such as Decree No. 152/2020/ND-CP dated December 30, 2020 of the Government, have many inadequate contents - especially regulations on Confirm work experience, time, application forms...; Applications for permits for foreign workers are increasing; Verifying the registration documents of businesses takes a lot of time, because it must be done carefully and learn from previous violations. In addition, many businesses have not researched carefully and fully and have not properly implemented the regulations on licensing for foreign workers according to Decree No. 152/2020, including suspected fake documents, so they have to send documents. Units and agencies verify and return documents. In addition, as the licensing application software has degraded, the process steps are no longer appropriate, leading to slow transfer processes; Coordination with departments and branches to share data, review, check and compare information about businesses is not synchronized, causing time delays; The expertise of staff advising on licensing for foreign workers is limited, and they have to do many things at the same time..." [iv]

Third, the penalty level for foreign workers working in Vietnam and for foreign employers working in Vietnam according to Article 31, Decree No. 28/2020/ND-CP dated January 1/ 03/2020 of the Government regulating penalties for administrative violations in the fields of labor, social insurance, and sending Vietnamese workers to work abroad under contracts is still too low. Specifically:
- A fine of from 1,000,000 VND to 3,000,000 VND shall be imposed on the employer when violating one of the following acts:
  a) Failure to report or reporting incorrect content and time limit on the situation of using foreign workers at the request of state labor management agencies;
  b) Do not send a copy of the signed labor contract to the agency that issued the work permit in the case of foreign workers working under a labor contract.
- Fine from 15,000,000 VND to 25,000,000 VND for foreign workers working in Vietnam who commit one of the following acts:
  a) Working without a work permit or without a written confirmation that you are not eligible for a work permit according to the provisions of law;
  b) Using a work permit or document certifying that you are not subject to a work permit that has expired.
This penalty level is too low and not enough of a deterrent to limit violations as described above, leading to many loopholes in the management of foreigners working in Vietnam, requiring policies and solutions. Practical and highly feasible solution.

4. Proposing a perfect solution (Uncle Ngan)
By researching, evaluating and analyzing legal regulations as well as the current state of state management of foreign workers in Vietnam, the authors have proposed a number of solutions to continue improving foreign workers. Improve the law on using foreign workers as follows:

Firstly, continue to improve the system of legal documents regulating the issue of using foreign workers in Vietnam.
Currently, issues related to the use of foreign workers are regulated in the Labor Code 2019 and many other legal documents such as: Civil Code 2015; Law on entry, exit, transit, and residence of foreigners in Vietnam; Law on Occupational Safety and Health; Social Insurance Law; Health Insurance Law... These guiding documents are issued by many ministries and branches, so they can cause overlap and difficulty in application. Reality shows that the number of foreign workers working in Vietnam is increasing and complicated, therefore, according to the authors, it is necessary to research, develop and promulgate a separate law regulating the use of foreign workers. is very necessary, which clearly stipulates the content of legal adjustments to the reception, management, and assurance of policies and regimes for foreign workers, creating a solid legal basis for the management of foreign workers. State regulations on labor. Some countries in the world today (Canada, Australia, Korea, Singapore, ...) have also issued separate laws on foreign labor to strictly manage and effectively use this labor resource. Our state needs to learn and absorb more experiences from developed countries, and continue to research both theoretically and practically related to the entire legal system of state management of foreign labor. outside to build and adjust to suit the actual situation.
Legal regulations need to be improved with more specific and clear content, however, administrative procedures should be simplified to ensure convenience for the management of state agencies, while avoiding causing difficulties. troubles for employees and employers during the implementation process, especially related to procedures and administrative authority in managing work permits of foreign workers. Most recently, the implementation of Decree 70/2023 of the Government amending and supplementing a number of articles of Decree 152/2020 regulating foreign workers working in Vietnam and recruitment and management of workers Vietnamese workers working for foreign organizations and individuals in Vietnam have had an outstanding change worth noting, which is the shortening of reporting time on the need to use foreign workers. Accordingly, at least 15 days in advance from the expected date of using foreign workers, employers (except contractors) are responsible for determining the need to use foreign workers for each position. jobs that Vietnamese workers cannot meet and report and explain to the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs where the foreign worker is expected to work, instead of 30 days as prescribed in the old regulations. [v]

Second, promote inspection, examination and handling of violations in the process of organizing and perfecting the mechanism for handling violations. Strengthen coordination between the Police and labor management agencies at all levels to strictly manage the activities of foreign workers in Vietnam; ensure the issuance of visas in accordance with the purpose of entry according to the provisions of the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam; promptly detect cases of circumvention and violation of the law for personal gain, causing economic instability, social order and safety and national security.
In addition, it is necessary to increase the level of penalties for violations of using foreign workers to be enough of a deterrent; Supplementing administrative sanctions for
agencies, organizations, businesses and individuals who violate legal regulations in case of declaring information to request visas for foreigners that is not in accordance with the purpose destination.

Third, continue to improve the state apparatus and improve the quality of officials and civil servants performing state management of foreign labor. This is considered a core part in implementing and enforcing the law, a bridge between the State and local governments, foreign workers and foreign employers. In recent times, the team of officials and civil servants performing state management of foreign workers has made many efforts to perform their functions and tasks, bringing many remarkable results. However, there are still many limitations that need to be re-evaluated and promptly resolved.

Finally, it is necessary to further promote propaganda and dissemination of legal regulations on using foreign workers to work in Vietnam. Develop appropriate information channels and document sources for employers and foreign workers in electronic form and translated into many foreign languages so that all parties can proactively learn information and comply with regulations. Because, in order to fully and accurately implement the provisions of the law, it is first necessary to correctly understand and raise the awareness of legal compliance for all organizations and individuals.

5. Conclude
In most nations worldwide, opening up to international integration is an unavoidable trend. Establishing favorable conditions to encourage the growth of Vietnam's society and economy, including labor market openness. As a result, circumstances are created for foreign workers in Vietnam. Annual figures show that the number of foreign workers in Vietnam is increasing, necessitating stringent handling of this issue. As of right now, our state's system of legal documents has been progressively finished, tightly and unambiguously defining the parameters and standards for the administration of foreign employees in Vietnam. Nevertheless, even if the 2012 Labor Code's major faults have been addressed by the 2019 Labor Code, comprehensive implementation guidelines have not yet been released.

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