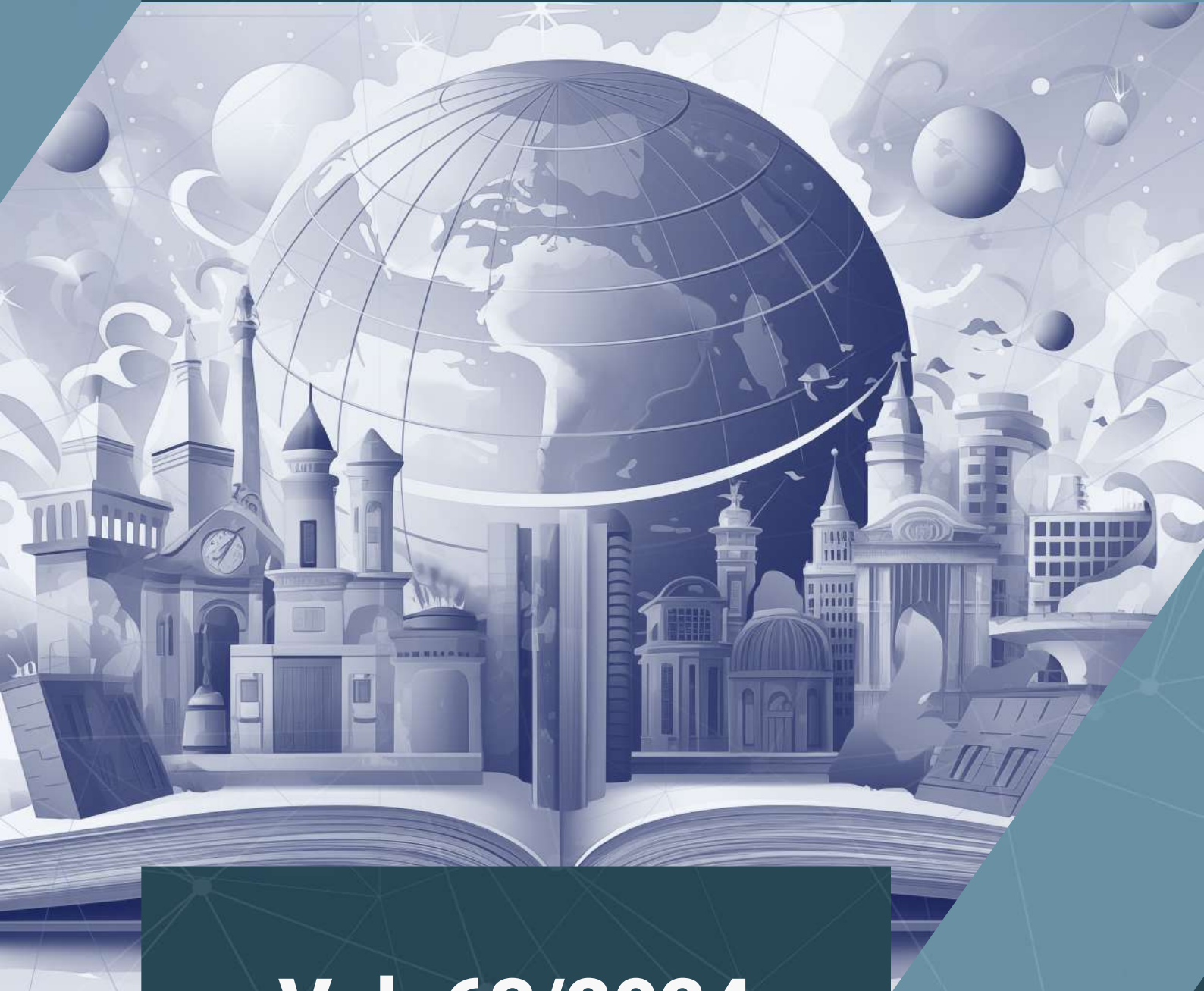




TECHNIUM
SOCIAL SCIENCES JOURNAL



Vol. 63/2024
A New Decade for Social Changes

PLUS
COMMUNICATION P



International
Communication & PR

Some policies and laws on freelance workers at land border areas in Vietnam and recommendations for improvement in the coming time

Pham Thi Huong Lan

Institute of State and Law, Vietnam Academy of Social Sciences

lanhlgvn@gmail.com

Abstract. Vietnamese freelance workers who work in land border areas of neighboring countries are quite large in number, thus the policies and laws on labor at the land border as well as issues of ensuring the rights of workers and labor management require more attention. In this article, the author will discuss some of the current status of policies and laws in Vietnam on freelance workers at the land border and solutions to improve policies, laws and management capacity in the coming time for Vietnamese people working in neighboring countries.

Keywords. Policy, law, freelance workers, land border

1. Introduction

Freelance workers at the land border areas in Vietnam raise the issue of how to ensure the legitimate rights and interests of these workers while also improve the quality of life of their families and the whole society. In addition, it is necessary to ensure the initiative, voluntariness and equality of each individual and family in choosing a place of residence as well as implementing measures to improve the quality of life of freelance workers. Freelance workers can take many different forms, this in turn affect the finances and economy of each family as well as the socio-economy of each country.

Policies and laws on land borders have always been of interest to the Party and the State of Vietnam, and particularly the subject of freelance worker has been focused on in recent times.

2. Policies and laws on freelance worker at land borders

The Vietnamese Government has issued Directive No. 07/CT-TTg on March 15th 2021 on attracting social resources for the socio-economic development task in land, sea and island border areas, in combination with the protection of national sovereignty and improving the people's lives. The Directive clearly stipulates: *“Ensuring a synchronous system of mechanisms and policies, effectively promote investment capital, creating an open legal corridor, favorable conditions, and encouraging social resources to participate in investing in socio-economic development associated with strengthening national defense and security in land, sea and island border areas”*. At the same time, it also emphasizes the issue of sedentarization and labor of the people, specifically: *“Gradually modernize border management; supporting the people,*

agencies, organizations, and individuals working and living in border areas, focusing on the issue of sedentarization, settlement, and livelihood stabilization, reducing spontaneous migration; sustainably reducing hunger and poverty; developing the socio-economy in combination with resource management and environmental protection”. This is one of the important policies of the State of Vietnam, displaying its concern for workers in the land border. The content of this policy is the basis and guideline to implement issues related to resources for establishing and developing the socio-economy in the land border, including workers. Among the issues of border management, support for livelihoods, education, employment, and labor, the most concerning issues are accommodation, food, and protection of workers’ rights, which are gradually being better and more effectively implemented.

The Government Resolution No. 23/NQ-CP on March 2nd 2022 on economic development in land border areas emphasized that: “Synchronously arrange the population, thoroughly resolve the urgent needs of housing, residential land, production land, domestic water, and employment for poor and disadvantaged ethnic minorities in border areas”. In order to develop the socio-economy in land border areas, the subjects of housing, production land, domestic water, and employment for ethnic minorities have always been of interest to our Party and State, especially the poor and those without stable jobs.

Regarding current legal regulations on labor at land borders, there are a number of legal documents as follows: The Labor Code (Code No. 45/2019/QH14), passed by the 14th National Assembly of the Socialist Republic of Vietnam, 8th session on November 20th 2019, this Code comes into effect from January 1st 2021; Law on Vietnamese Guest Workers (Law No. 69/2020/QH14) passed by the 14th National Assembly, 10th session on November 13th 2020, comes into effect from January 1st 2022; Government Decree No. 112/2021/ND-CP on December 10th 2021 detailing a number of articles and measures to implement the Law on Vietnamese Guest Workers 2020... and a series of other legal documents and regulations related to this field have created a relatively complete legal framework for Vietnamese guest workers, clearly stipulating the rights and obligations of guest workers; the rights and obligations of enterprises, organizations sending guest workers and related organizations and individuals; contributing to promoting legal migration, strictly prohibiting and sanctioning acts of violating the law on Vietnamese guest workers. The legal documents system of Vietnamese guest workers also clearly stipulates the responsibilities of ministries, branches and localities, in which the Ministry of Labor - Invalids and Social Affairs is assigned to perform the task of state management of guest workers...

The legal system on Vietnamese guest workers includes the Law on Vietnamese Guest Workers and bylaw documents that stipulate the management of Vietnamese guest workers, specifically as follows: Regulations on the granting, changing and revoking of Licenses for services of sending guest workers for service enterprises operating in this field; Regulations on contract registration of service enterprises sending guest workers: Enterprises must register with the Ministry of Labor - Invalids and Social Affairs about contracts to send guest workers and can only implement the contract after receiving the approval of the Ministry of Labor - Invalids and Social Affairs; Regulations on the management, protection of legitimate rights and interests and handling of issues related to Vietnamese guest workers; Regulation on the content, program, compiling and publishing documents to provide necessary knowledge for workers before going to work abroad; Regulation on annual or irregular reports to update the statistics of enterprises, career organizations and other organizations and individuals sending guest workers; the total number and list of Vietnamese guest workers...

In recent times, Vietnam has signed labor cooperation agreements with 3 countries: Thailand, Laos, Cambodia, to manage Vietnamese workers working in these countries. Specifically, on July 1st 2013, the Minister of Labor - Invalids and Social Affairs of Vietnam and the Minister of Labor and Social Welfare of Laos had signed on behalf of the two governments the Labor Cooperation Agreement (replacing the 1995 Labor Cooperation Agreement and the Protocol amending and supplementing the 1999 Labor Cooperation Agreement); on March 22nd 2017, the Laos Ministry of Labor and Social Welfare, the Vietnamese Ministry of Labor - Invalids and Social Affairs and the Cambodian Ministry of Labor and Vocational Training signed a Memorandum of Understanding on Labor Cooperation¹. In some border localities such as Cao Bang, it is a known issue that “the situation of illegal border crossing of freelance workers to work in neighboring countries is on the rise. This has many unpredictable consequences for workers and their families; requiring local authorities to come up with effective, long-term solutions to resolve this situation.

For Vietnamese people living on land borders, there are also many policies and laws regulating these specific guest workers, such as: The Labor Code; Law on Vietnamese Guest Workers and bylaw documents that clearly stipulate the management of Vietnamese guest workers. The rights and obligations of Vietnamese guest workers living on land border areas are guaranteed during the working process, and labor management for these workers has been implemented quite appropriately in recent times.

However, the management of freelance workers at land border areas are facing many difficulties and complications as their jobs are unstable and they migrate to many different places². The results of the survey for the Project “Developing the labor and employment market” conducted by the Ministry of Labor - Invalids and Social Affairs also show that the main purpose of migrant workers is to find a job with higher income. Rural workers and migrant workers in border areas are often young workers (aged 18 - 35), of which the proportion of women is higher, accounting for about 60%, while that of men is about 40%. The survey results also show that in reality, about 65% of migrant workers do not have technical expertise; the jobs of low-skilled migrant workers are mainly manual, unstable jobs; and the working conditions and environments are often toxic and dangerous³... In addition, freelance workers often do not have labor contracts and do not participate in social insurance or health insurance. This makes it more difficult to manage the employment of freelance workers, requiring state management agencies to come up with measures to support freelance workers in finding stable jobs and ensuring social security for freelance workers.

Vietnamese people living in land border areas who work at neighboring countries such as China are often illegal workers, mainly unskilled workers doing menial jobs such as loading and unloading goods, harvesting agricultural products, raising livestock... There are many reasons for freelance workers to cross the border to work in China, but the main reason is that there is no work during the off-season, and people living on both sides of the border are geographically close. Thus, Vietnamese workers can go to China to work and return home during the day. This provides them with regular work and a stable income. Through surveys

¹ <https://www.molisa.gov.vn/baiviet/26803?tintucID=26803>

² Survey results of the project “Policies and laws on land border areas in socio-economic development and ensuring national defense and security in Vietnam today” conducted in 2023 in Tay Ninh province.

³ Increasing access to employment services for migrant workers (<https://www.molisa.gov.vn/baiviet/29656?tintucID=29656> website of the Ministry of Labor – Invalids and Social Affairs).

and research conduct in Lao Cai province, it can be seen that the main reason leading to the increasing number of Vietnamese citizens going to China to work is due to lack of jobs, especially during the off-season. Moreover, the demand for unskilled labor in China is very high, the income is higher, the payment method is simple,... so naturally it attracts more freelance workers in Vietnam.

From the above findings, we believe that there is a need for effective solutions to manage and prevent illegal guest workers (for example illegal workers in China), while ensuring the rights and legitimate interests of other guest workers. Research and surveys show that the labor force in the border areas is a mixture of various types of labor across the borders of neighboring countries, which are historically, culturally, and linguistically diverse in each locality. Labors in the border areas have characteristics such as: Frequent border movements, there are also cases of going in the morning and returning in the evening, sometimes going for several months or years and before returning.

3. Recommendations on policies, laws and improving management capacity and awareness for freelance workers at land border areas

First, it is necessary to develop policies and laws to manage freelance workers in land border areas with the aim to protect Vietnamese workers and the common interests of society.

Second, there should be specific and detailed legal regulations to regulate freelance workers in the land border areas. Currently, there are many cases that cannot be determined whether they are subject to the Law on Vietnamese Guest Workers 2020 or not because this group of freelance workers has many unique characteristics.

Third, in the coming time, it is necessary to have a policy that focuses on developing high-quality human resources, to participate in the regional and global labor market; increasing the rate of trained labor to better suit the economic restructuring, meeting the practical requirements in land border areas. It is also necessary to train human resources with high expertise and professionalism; diversify and expand cooperation in the supply and training of human resources in the direction of linking training and operating; creating conditions for innovation in content, programs and methods of training, updating specialized knowledge and practical skills.

Fourth, promote the role of the judiciary in supporting the management of freelance labor at land border areas. In a state of law, the judiciary plays a very important role as judicial decisions always represent the highest position in a jurisdiction, so they need to be strongly enforced. Therefore, the Labor Code needs to emphasize the role of judicial agencies. The court is the agency to uphold justice and at the same time protect human rights and the legitimate rights and interests of workers.

Fifth, in order to prevent the situation of illegal migration of freelance workers to other countries, local authorities at all levels and sectors need to strengthen propaganda, raise awareness of people to strictly comply with the law, the consequences of illegal migration, not to illegally migrate, and at the same time encourage freelance workers to sign labor contracts. In addition, local authorities need to have policies and solutions to create jobs and promote cooperation in managing cross-border labor, and negotiate with neighboring countries to export labor, which will soon help people to stabilize their lives and sustainably reduce poverty in the locality. The police force also need to strengthen public awareness on migration regulations. In addition, local authorities and agencies need to strictly manage personal information, household registration, temporary residence, and temporary absence; combat acts of enticing people to illegally migrate and strictly handle them according to the law.

Sixth, raise awareness for freelance workers at land border areas, promote propaganda, dissemination and education of related laws to raise awareness and legal awareness for workers, in order to limit violations by employers due to lack of awareness of relevant Vietnamese legal provisions and in complying with legal provisions.

The reason for non-compliance with the law by many freelance workers at the land border areas is the lack of information and understanding of the law. Therefore, in addition to propaganda activities, it is necessary to promote legal consultant activities of law firms and legal aid centers.

Promote propaganda and dissemination of laws in various forms, suitable for agencies, organizations and enterprises to understand their rights and obligations in accordance with the provisions of law.

References

1. The Labor Code (Code No. 45/2019/QH14), passed by the 14th National Assembly of the Socialist Republic of Vietnam, 8th session on November 20, 2019, this Code comes into effect from January 1st 2021.;
2. Law on Vietnamese Guest Workers (Law No. 69/2020/QH14) passed by the 14th National Assembly, 10th session on November 13th 2020, comes into effect from January 1st 2022.;
3. Directive No. 07/CT-TTg on March 15, 2021 of the Prime Minister on attracting social resources for the socio-economic development task in land, sea and island border areas, in combination with the protection of national sovereignty and improving the people's lives;
4. Resolution No. 23/NQ-CP on March 2, 2022 of the Government on economic development in land border areas;
5. Decree No. 112/2021/ND-CP of the Government on December 10th 2021 detailing a number of articles and measures to implement the Law on Vietnamese Guest Workers 2020