



# CONSTITUTIONALE

Volume 3 Issue 1, January-June 2022: PP: 43-58

Faculty of Law, Universitas Lampung, Bandar Lampung, Indonesia.

<http://jurnal.fh.unila.ac.id/index.php/constitutionale>

P-ISSN: 2723-2492 E-ISSN: 2745-9322

## Regulation of The Use of Foreign Workers in Indonesia After The Job Creation Act: Problems and Solutions

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Submitted: Mar 07, 2022; Reviewed: Jun 04, 2022 ; Accepted: Jun 30, 2022

### Article's Information

### Abstract

#### Keywords:

*Foreign Investment; Foreign Workers; Unemployment.*

#### DOI:

<https://doi.org/10.25041/constitutionale.v3i1.2558>

#### Abstract

*Problems in the labor law sector in Indonesia cannot be separated from the increasing number of foreign workers which are feared to take place and the role of domestic workers. This problem almost always exists every year because foreign investment enters Indonesia while bringing in foreign workers as experts or genuine workers from the investors' countries of origin. The entry of foreign workers is a trigger for disputes between foreign workers and domestic workers. As it is known that the Indonesian population is very large, which can be seen from the annual data of the national statistical center, while the high population is not matched by a large number of jobs, resulting in unemployment and regional economic inequality. Based on this background, the problem of foreign workers is related to the renewal of the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (from now on referred to as the Job Creation Law) and its implementing regulations. This paper uses a normative legal research method using legal sources from secondary legal materials. This legal research uses a legal and conceptual approach with a focus on regulations and concepts or theories or principles related to the research topic. This paper presents problems in the new regulation on foreign workers after the enactment of the Job Creation Law. In addition, this paper presents its solution efforts to overcome these problems in Indonesia. This paper uses a normative legal research method using legal sources from secondary legal materials. This legal research uses a legal and conceptual approach with a focus on*



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## **A. Introduction**

Additional investment is the Indonesian government's target in implementing the national economy because the COVID-19 pandemic has significantly impacted activities and the national economic system. Investments activated en masse aim to return national economic growth to a standard point again. In addition, investment is aimed at increasing employment opportunities, developing people's economic development, increasing the quality and quantity of national technology, developing a sustainable economy, and improving social welfare to create a national economic climate that has competitive value. Each investment will significantly contribute to a country's economic growth because the investment will encourage the development of the overall economic activity.<sup>1</sup> In addition, the investment must also be supported by adequate quality infrastructure.<sup>2</sup>

Investment has an essential role in improving the economy and employment growth.<sup>3</sup> The objectives behind the implementation and activation of investment have not been fully achieved due to the imbalance in the number of investors, namely between foreign investors and domestic investors or domestic investors. Increasing the number of investments in Indonesia instead focuses on increasing the number of foreign investors and this opportunity is extensively utilized by foreign investors rather than domestic investors. This is evidenced by the significant absorption of foreign workers and the increase in foreign investors. The implementation of development in Indonesia requires a large amount of capital.<sup>4</sup> Supposedly, with the addition and change in the investment climate, domestic investors should use it to advance the national economic system, plus the suspension of company operations due to the global pandemic.

Changes in the investment climate are generally influenced by factors that are not only related to the national economy but also by factors related to politics and government. In this case, the investment climate that is being activated is the foreign investment climate. The factors that can affect the change in the investment climate are legal certainty and enforcement, regulation and legal certainty for each region, balance and compliance with the substance of international law, relations between bureaucrats in the bureaucracy, political stability,

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<sup>1</sup> Fery Dona, "Peran Penanaman Modal Asing (PMA) dalam Pembangunan Ekonomi di Era Otonomi Daerah", *Al-Ahkam Jurnal Ilmu Syariah Dan Hukum* Vol. 2, Nomor 1, (2017) : 86

<sup>2</sup> Muhammad Fadhilah, "Penanaman Modal Sebagai Penggerak Penguatan Hukum Dan Pembangunan Ekonomi", *Jurnal Ilmu Sosial dan Pendidikan* Vol. 5. No. 2 (2021) : 188

<sup>3</sup> Sri Purwaningsih, "Penanaman Modal Dalam Pertumbuhan Ekonomi", *Jurnal Hukum Dan Dinamika Masyarakat* Volume 19, No. 1 (2021) : 117

<sup>4</sup> Ardiana Hidayah, "Landasan Filosofis Dan Asas-Asas Dalam Hukum Penanaman Modal Di Indonesia", *Jurnal Solusi* Volume 16 Nomor 3 (2018) : 221

economic stability, social stability, state of facilities and infrastructure and infrastructure, legal protection of intellectual property rights, and other supporting factors.

The addition of investment to the state, both foreign investment and domestic investment, has many benefits, especially in terms of production operations. Foreign investment (PMA) is an alternative to meet capital needs development<sup>5</sup>. Every company, whether a private company, foreign company or national company, in this return to the normal condition, will indeed be competing to re-enter production operational activities so there will be a lot of recruitment of workers. This recruitment shows the available jobs expected to help the government alleviate poverty and unemployment. A populist economy such as the regional economy will certainly also be helped by the re-operation of regional companies, which will help stop inequality between regions.

Investment activities are constructive for the government in catching up with the economic competitiveness of other developing countries, especially developing countries in Southeast Asia. Indonesia consists of many natural and human resources so they should be utilized as widely as possible by the government, business people or domestic investors, and the community. Economic growth is related to increasing the production of goods and services in the community's economic activities.<sup>6</sup> However, currently, against the backdrop of the global pandemic that affects the national economy, the government prefers to widen the channels for foreign investment to enter the country rather than intensify national investment for domestic investors.

The number of companies absorbing foreign workers aligns with many foreign investments in Indonesia. The absorption of foreign workers affects the absorption of domestic workers which is decreasing because their existence and role are threatened by foreign workers. Often the reason for requiring genuinely skilled workers is an excuse to continue to employ workers from the country of origin of foreign companies even though they are already in the territory of Indonesia, which incidentally should employ more indigenous workers. In addition, there is an assumption or condescending attitude from foreign companies or even national companies themselves that indigenous workers are still lagging in terms of the quality of human resources and their abilities or expertise.<sup>7</sup>

The quality and quantity of foreign workers can shift the number of domestic workers because in terms of quality, domestic workers are far behind foreign workers. The quantity of foreign workers that have not been regulated in this national regulation is burdensome for domestic workers because domestic workers should have the right to get a job and a decent living as mandated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The government, through lawmakers should consider the article as a guideline to protect and enforce the rights of their citizens, especially domestic workers.

Regulations in the Job Creation Law are considered to have opened up the entryway for foreign investors and the use of foreign workers. This is as regulated in Article 45 paragraph (1) of the law. In the article there are provisions governing the use of foreign workers, however this article is considered problematic and more profitable for bureaucrats, foreign investors, and

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<sup>5</sup> Saharuddin Didu, "Pengaruh Utang Luar Negeri Dan Penanaman Modal asing (PMA) Terhadap Pertumbuhan Ekonomi Di Indonesia", *Jurnal Ilmu Ekonomi Pembangunan* Vol 7, No 2 (2017)

<sup>6</sup> Ardi Afrizal, "Analisis Peranan Penanaman Modal Dalam Negeri (PMDN) Dan Penanaman Modal Asing (PMA) Serta Pengaruhnya Terhadap Kesempatan Kerja Dalam Perekonomian Di Propinsi Jambi Periode 1990-2008", *Jurnal Development* Vol 3 No 2 (2015): 21

<sup>7</sup> May Linda Iswaningsih, I Nyoman Putu Budiarta, and Ni Made Puspasutari Ujianti, "Perlindungan Hukum terhadap Tenaga Kerja Lokal dalam Undang-Undang Nomor 11 Tahun 2020 tentang Omnibus Law Cipta Kerja," *Jurnal Preferensi Hukum* 2, No. 3 (2021): 479-480.

foreign companies, especially bureaucrats who in fact, prioritize the interests of the national economy so that the regulations made managed to attract many foreign investors in the law.

This paper reviews the problems of enacting the Job Creation Law and its implementing regulations. Furthermore, this paper provides reform efforts that are offered in the form of solution efforts to resolve the problems caused by the regulations in the law that should not have been implemented in Indonesia. This is based on the quality of human resources and the expertise and abilities possessed by these human resources. Suppose the quality possessed by each human resource has developed. In that case, mainly if it develops in the field of using technology as well, it can be more confident that human resources, which in this case are domestic workers, are more able to compete healthily and fairly with foreign workers.

This research is expected to provide benefits in the form of theoretical benefits and practical benefits. In terms of theoretical benefits, this research can contribute to knowledge and legal insight for the general public about legal phenomena or legal issues in the field of employment that occur in Indonesia, especially regarding foreign labor regulation issues that are still related to investment law. In addition, implementing labor law in the community or the field can provide evaluation benefits for the government. The practical benefits of this research are related to the benefits obtained by researchers to conduct further research along with developing regulations regarding foreign workers. Meanwhile, practitioners and policymakers benefit from user inputs and references in preparing further regulations following scientific, technological, and law developments.

The legal research method used in this scientific paper is a normative legal research method commonly referred to as doctrinal legal research, which only uses legal sources derived from secondary legal materials. The definition of normative legal research based on Soerjono Soekanto and Sri Mamuji is legal research examining only library materials or secondary data. Meanwhile, Soetandyo Wignjosoebroto defines normative legal research as legal research that is conceptualized and developed based on the doctrine adopted by the drafter and/or developer.<sup>8</sup> Meanwhile, the research approach used is a legal approach and a conceptual approach. The legal approach is carried out by reviewing the law and its implementing regulations as well as concepts or principles related to legal issues that are the research topic.

Research data sources are secondary data obtained from the results of library searches which consist of primary or primary legal materials, secondary legal materials, and/or tertiary legal materials if necessary. The primary legal material is obtained from the study of legislation or doctrine, commonly referred to as doctrinal legal research. The secondary legal materials are obtained from the results of previous research, legal journals, and the opinions of legal experts. Meanwhile, tertiary legal materials come from legal dictionaries, encyclopedias, and cumulative indexes, which are more of a literature review, such as the meaning of words or combinations of words.<sup>9</sup>

This research is pursued by searching or retrieving data through the study of legal materials prioritized first. Furthermore, the researcher collects data from legal materials supported through literature studies or literature studies, including theories, concepts, principles, habits, and legal norms that apply in society. Finally, the researcher collects data from legal materials that are not mandatory because not all normative legal research requires data from tertiary legal materials because of their nature that explains primary and secondary legal materials.

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<sup>8</sup> Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, Bandung: Alfabeta, (2020), p. 68-71.

<sup>9</sup> Bachtiar, *Metode Penelitian Hukum*, South Tangerang: UNPAM Press, (2018), p. 55-84.

The research results in the form of secondary data will be grouped and selected to be analyzed article by article and regulation by regulation. Data selection is intended to make it easier to consider which data are data whose validity or validity is guaranteed. Furthermore, the data are grouped according to specific categories to make it easier for researchers to see problem by problem from each category. Then, the data is systematically described in sentences to facilitate interpretation and understanding of the analysis results. These methods can be referred to as qualitative analysis techniques in which the results are described systematically, logically, and effectively.

The secondary data is analyzed qualitatively by examining chapter by chapter, which will be described descriptively in sentences to produce more specific data. These more specific data are then compared with previous laws and regulations and some previous research results or some valid data that has existed before. The data comparison results will reveal the differences between the old and new policies and similarities that still need to be reformed. After that, the results of the analysis and testing of the validity of the data can be concluded, which are written in legal journal articles.

This legal research uses a constructivist paradigm which is an attempt to understand relative truth. Reality varies according to subjective mental constructions that shape perceptions of each individual based on social experience, value systems, religion, and culture so reality cannot be observed in general because researchers are required to prove abstract things. Legal research with this paradigm uses dialectical and hermeneutic methods, which are carried out by comparing opinions to reach an agreement and by identifying the construction of each person's opinion.<sup>10</sup>

Based on this background, the author examines the paradigm of the relationship between labor regulations and implementation after the enactment of the work copyright law. This research is expected to significantly contribute to the theories, concepts, and principles of employment after the work copyright law. The novelty of this research will provide significant contributions and changes in employment issues in the field of foreign workers.

## **B. Discussion**

### **1. Problems with The Regulation of Foreign Workers in Indonesia after The Job Creation Act**

The presence and enactment of the Job Creation Law is a problem or dispute between policymakers and the public. The new regulation is a legal reform from the previous law, which is expected to be a source of current and future laws that are valid for extended periods. Currently, after almost two years since the enactment of the law, several provisions in it have begun to be evaluated and criticized with new facts in the field, legal developments, as well as the formulation and enforcement of new regulations within the hierarchical framework of the statutory system.<sup>11</sup>

The provisions of the Job Creation Law have recently become a hot topic for law enforcers, policymakers, and of course the Indonesian people. The regulation, which was ratified and enforced since 2020, was requested for a trial in the trial of the Constitutional Court and has reached the verdict of the panel of judges that the law is unconstitutional. Therefore, within two years, the law must be updated in its articles. This is because a lot of people feel disadvantaged as a result of the ratification and enforcement of the law, which is said to be not oriented towards

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<sup>10</sup> Sulaiman, "Paradigma dalam Penelitian Hukum," *Kanun: Jurnal Ilmu Hukum* 20, No. 2 (2018): 260-262.

<sup>11</sup> Ahmad Redi, et al, *Omnibus Law: Diskursus Pengadopsiannya ke dalam Sistem Perundang-Undangan Nasional*, Depok: Raja Grafindo Persada, (2020), p. 21-22.

job creation as the title suggests for residents or workers or workers with Indonesian citizenship, instead it becomes a field of job monopoly for foreign workers.

The presence and enactment of new regulations sometimes compare with old regulations and become a source of dispute with the issue of revoking old regulations where not all provisions follow the facts. Some provisions in the provisions no longer follow the new facts in the field because their implementation has taken advantage of the gaps in them from the beginning. Furthermore, the development of the law itself also affects one or more provisions in a regulation to be out of sync with the truth in the field. The provisions in it may not necessarily apply or may not apply forever or within a specific time.<sup>12</sup>

The facts on the ground show the opposite phenomenon from the very neatly and systematically regulated provisions in the laws and regulations under them in the hierarchy of Indonesian laws and regulations. This becomes something that is not surprising when many people feel that they have suffered losses and even submit requests for material and/or formal review of the substance and implementation of the articles in the law. Given the problems in the field, law enforcers, in this case are law enforcers within the constitutional court accepting the application's submission.

The legal provisions that apply before 2020 are considered to have experienced a shift in moral values and are no longer following the development of an increasingly modern era. In this modern era, many countries, including the people in them, compete to carry out activities and work in industry and business or entrepreneurship. These fields are currently strongly influenced by the existence of technology and digitalization so that advances in the process or operational stages of production are needed, especially in terms of the quality of human resources that must be able to compete with artificial humans such as machines, robots, and their originators, which in this case is controlled by experts from abroad. Therefore, for the sake of readiness to meet the development of law, technology, and the times, the law or what is called a law must also experience development without any effort to change the moral values of the Indonesian nation based on Pancasila, the Constitution and the Preamble to the Constitution.

Renewal of provisions made in the Job Creation Law as occurred in the changes and/or additions to several provisions in the previous law. In this case, specifically on writing related to the entry of many foreign investors and foreign workers into the archipelago. The new provisions related to these two matters are currently one of the legal problems among the community, especially domestic workers. The number of investors entering the country is perfect for developing the national investment climate. Still, when it is related to the entry of many foreign workers with long-term work contracts, it becomes a national legal issue.

The addition of foreign investment in Indonesia and the addition of foreign human resources absorption in Indonesia is regulated in several laws and regulations, namely Law Number 25 of 2007 concerning Investment (in the future referred to as the Investment Law), Law Number 39 of 2009 concerning Areas Special Economics (in the future referred to as the Special Economic Zone Law), Law Number 2 of 2017 concerning Construction Services (in the future referred to as the Construction Services Law), and Law Number 13 of 2003 concerning Manpower (in the future referred to as the Manpower Act) which reforms are made in the Employment Creation Law and Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers (in the future referred to as PP on the Use of Foreign Workers). The regulation in the form of government regulation is a follow-up regulation after the enactment of the Job Creation Law.

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<sup>12</sup> Muhamad Sadi Is, *Hukum Ketenagakerjaan di Indonesia*, Jakarta: Kencana, (2020), p. 143-145.

The new provisions in the Job Creation Law have updated the provisions contained in the previous law because the law develops along with the times. The Job Creation Law was created to respond to global challenges influencing the country's foreign investment climate and the overflow of employment contracts with foreign workers employed in Indonesia. Therefore, this becomes a problem or a conflict between the government as the maker of provisions or policies and the community where the community feels very disadvantaged by the promulgation of the abovementioned regulations.

The existing legal problems are related to the implementation or implementation of the latest articles or policies in the regulations mentioned above, which are not yet on target or not following the target. The abovementioned regulations should be present to fix the problem of the absorption of foreign workers in Indonesia. However, it has become a lousy perception by the public towards the regulations mentioned above because this is a problem that is still the subject of discussion considering a large number of human resources and the Indonesian workforce that are not matched by efforts to improve the quality of these human resources further.

There is a problem there is also a solution. Problems that occur in the field or among small, medium, and upper communities, must be able to and be able to find solutions. Problem-solving is carried out by mobilizing solution efforts starting with legal reform or what is referred to as the renewal of laws or legislation and then harmonizing to make or renew the law itself, whether it has met the targets of justice, certainty, and/or whether the law itself has or is deemed capable of providing benefits to the community.<sup>13</sup> This is related to the principles that Gustav Radbruch, including legal justice, certainty, and benefits.

The law in Indonesia is positive so that it is made or updated by involving the active participation of the community to answer challenges or legal issues or what in this case is usually called the law must be responsive. Appropriately, the law is made from, by, and for the community to create justice and prosperity that prosper the community. Therefore, legal reform in the form of updating the provisions contained in the articles of the Job Creation Law and Government Regulations relating to the use of foreign workers must fulfill the purpose of the existence of the law, both in terms of substance and its enforcement or implementation.

## **2. Solutions to The Problem of Using Foreign Workers in The Job Creation Law**

The absorption of foreign workers is often carried out on a large scale without specific proportions of companies for certain categories. The company will continue to absorb foreign workers exploitatively if no regulations govern the frequency or quantity that must be absorbed compared to domestic workers. Foreign workers perceived and considered to have more ability, expertise, and high work experience always get job recruitment because the quality of their human resources follows the company's requirements. Plus now, work efficiency is highly demanded in the world of work as the initial goal of returning to the company's operational activities is to produce a product following the target.

Developed countries and countries more developed than Indonesia have created and innovated a lot in science and technology for work efficiency so that companies recruit only workers who are truly experts in their fields. Of course, the economies of these countries are already higher than Indonesia's. The competitiveness and demands of the backwardness of the national economy are the triggers for the government to increase foreign investment and for foreign workers to enter the archipelago. Foreign investors help increase investment and the

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<sup>13</sup> Lailatul Mufidah, Uswatul Khasanah, and Qonita Qurrota A'yun, "Menelisik Regulasi Penggunaan Tenaga Kerja Asing (TKA) terhadap Eksistensi Pekerja Lokal di Indonesia dalam Perspektif Keadilan Hukum," *e-Journal Al-Syakhshiyah: Journal of Law & Family Studies* 2, No. 2 (2020): 253-254.

capital market, which is expected to attract many foreign investors. Meanwhile, foreign workers are employed under the pretext of being a team of experts and expert staff from the country of origin of the technology and/or foreign companies.

The provisions in the regulations ratified and enforced by the government since 2020 regarding work creation still raise many pros and cons. This is because the problem of employment and employment in Indonesia from year to year is still homework for policymakers and bureaucrats.<sup>14</sup> Therefore, it is unsurprising if the regulation, which was even designed from the start, has caused a lot of conflict among the public, both for people who are legally literate and for people who are not yet legally literate. The provisions in the regulation that is still a problem, along with the solutions offered, are as follows:

a. Problems and Solutions Offered in the Construction Services Law

1) Article 33 of the Law on Construction Services

The provisions that are still a problem in the Job Creation Law are the provisions contained in Article 33 paragraph (1) letter (d) of the Construction Services Law, which have been updated in the law. The article regulates the quantity or frequency of Indonesian workers employed more than foreign workers. However, the facts are not the case because companies tend to think logically and rationally to achieve operational production targets so that unskilled and experienced domestic workers are eventually replaced by foreign workers. This fact is one of the evaluations of policymakers on implementing the policies they make.

The quantity of labor use can be seen from the number of foreign workers entering the territory of Indonesia during a specific period, in this case, within five years and specifically since the enactment of the Employment Creation Law and the PP on the Use of Foreign Workers. Based on statistical data from the Ministry of Manpower, in the last five years, from May 2016 to May 2021, there were 85,974 foreign workers, totaling 95,335 foreign workers, totaling 109,546 foreign workers, totaling 93,762 foreign workers, and totaling 92,058 foreign workers. Although the number decreased at the beginning of the COVID-19 pandemic, this decrease was not significant enough to provide domestic workers or workers with more flexible space or employment opportunities due to job competition with foreign workers or workers.

The data above shows that foreign workers entering Indonesian territory are decreasing during 2019, 2020, and 2021. These data have been recorded in the statistical data of the Ministry of Manpower or foreign workers who have passed through immigration legally. In contrast, the data for foreign workers with illegal status is unknown because many have escaped immigration or smuggling. This amount is also deemed unable to restore the satisfaction and sense of justice for the Indonesian people because foreign workers have decreased slightly because of the global pandemic.

The decline during this global pandemic made the government continue to encourage foreign investment, which was related to an increase in foreign workers. The decrease in the number of foreign workers was caused by the moratorium on granting new permits for the use of foreign workers, which was still valid during the pandemic. This is because the moratorium on the use of foreign workers still provides exceptions to specific provisions, namely exceptions for foreign workers who work in national projects such as national strategic projects and national strategic vital objects.

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<sup>14</sup> Dalinama Telaumbanua, *Hukum Ketenagakerjaan*, Yogyakarta: Deepublish, (2019), p. 1-4.



Exceptions made for foreign workers in specific national projects must meet the terms and conditions. Such exceptions must obtain special permission in writing per the considerations of the institution, agency, service, or ministry obliged to issue it regarding discipline to health protocols. Exceptions are also made to the use of foreign workers for whom contract extensions or work agreements are made to foreign workers who are being employed or whose term of employment is about to expire and are still in Indonesia as requested by the employer.

Based on data from the Ministry of Manpower as of May 2021, the number of foreign workers entering Indonesian territory comes from various business fields. A total of 50,688 foreign workers work in the service sector, 39,153 foreign workers work in industry, and 2,217 foreign workers work in the waters and agriculture sectors. The large number of incoming foreign workers who have almost mastered various fields are still able and able to beat the number of domestic workers when viewed from the point of view of the quality of human resources and their essential role in production operations, especially concerning technology experts and transfer of expertise.

New provisions have been regulated in the Job Creation Law to avoid or reduce the arbitrariness of foreign workers who have better abilities than domestic workers. The mentality of domestic workers is sometimes weakened in the world of work due to insecurity over the quality, intelligence, or expertise of human resources. Therefore, the law regulates the rights and obligations that can be obtained and must be carried out by employers and foreign workers in the context of respecting and appreciating domestic workers as done by foreign workers against domestic workers.

## 2) Article 42 of the Construction Services Law

This article in the Employment Creation Law has determined rules for employers or employers to carry out obligations within the framework of the plan for the use of foreign workers ratified by the Central Government.<sup>15</sup> This provision excludes specialized foreign workers who are required to carry out types of operational production activities that are terminated due to vocations, technology-based startups, emergencies, business visits, and research within a certain period. This exception is simply because the government still needs a good cooperative relationship with the country of origin of the technology and the inventors.

The article above also reforms the provisions if an employer or employer or an individual is not allowed and is not given permission to employ foreign workers or workers. In addition, in the reforms mentioned by the Job Creation Law, there are terms and conditions regarding foreign workers who can work in Indonesia in the context of only working relationships with certain positions or positions or jobs and within a certain period, as evidenced by a contract or agreement, both of which are obtained following the competencies related to the position or position or work to be carried out.

The article above also regulates the prohibition for foreign workers or workers to hold positions or positions or jobs that are in the management of personnel. The personnel here are essential because they involve or relate to secrets or primary data or company formulas or formulas, whether regional or local companies, national companies, regional companies, and international companies, especially in this case are regional or local and national companies which are companies originating from within the country.

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<sup>15</sup> Fani Budi Kartika and Erni Darmayanti, "Analisis Hukum Penggunaan Tenaga Kerja Asing terhadap Pertumbuhan Ekonomi di Kota Medan," *Jurnal Ilmiah Penegakan Hukum* 8, No. 1 (2021): 28-29.

### 3) Article 45 of the Construction Services Law

This article has undergone several changes in the provisions stipulated in the Job Creation Law. The first provision that is amended relates to the obligations carried out by employers or employers for foreign workers or workers, namely appointing workers or workers with Indonesian citizenship to become workers or assistants for foreign workers or workers who work as experts in the context of technology transfer and transfer of ability or expertise from foreign workers to domestic workers.

The second obligation amended therein is to provide education and job training for domestic workers or Indonesian citizens following the terms and conditions in the positions or positions or jobs held by foreign workers or workers. This job education and training are essential because it relates to the agility and results of an agency or company's operational activity. In addition, a competent workforce can achieve efficiency, effectiveness, and work targets.

The third obligation that is amended from the previous provisions is to return foreign workers or workers to their home countries when the employment relationship in the contract or work agreement has ended, which means that there are no special rules regarding the extension of the contract or work agreement between the employer and the workers or labor. This is also related to the existence of a companion workforce whose purpose is to transfer technology and expertise to competent workers who can replace the role and position of foreign workers in a company or agency.

### 4) Article 47 of the Construction Services Law

This article has been amended with a stipulation that the employer must carry out the obligation to pay specific compensation for each employed foreign worker. However, there are exceptions to the obligation to make these payments to employers who are representatives of foreign countries, government institutions, religious institutions, social institutions, certain positions in educational institutions, and international bodies. This provision and the exception are increasingly seen as advantages focused on foreign workers, such as compensation so that the compensation received by and between foreign workers and domestic workers must achieve justice.<sup>16</sup>

Another provision regarding construction services is that a construction service business entity must and has an obligation to:

- a) register for business entity experience, register for expert appraisers, register for workers, register for labor experience;
- b) educational institutions and job training in the construction sector in a professional manner;
- c) accrediting associations and suppliers of construction services, accrediting professional associations and permits to professional certification agencies;
- d) establishing work certification agencies for the implementation of competency or work quality certification activities that have not been or have not been carried out by professional certification agencies that have been established by associations or institutions education and job training; and
- e) assign expert appraisers for failed building conditions; equalizing foreign workers with domestic workers is no less critical.

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<sup>16</sup> Alvian Octo Risty, et al, "Harmonisasi Pengaturan Jabatan Tertentu yang Dapat Diduduki oleh Tenaga Kerja Asing Kategori Pertambangan dan Penggalan," *Jurnal USM Law Review* 4, No. 1 (2021): 416-418.

## b. Problems and Solutions Offered in the Special Economic Zone Law

Another law contained in Article 150 of the Job Creation Law is the Special Economic Zone Law. Article 41 of the law is amended with a new provision in which the plan to use foreign workers who have positions as directors or commissioners will only be ratified once. The validity period for ratifying the plan to use foreign workers is as long as the foreign workers still hold positions or positions as commissioners or directors. From this regulation, it can be seen that there is still a significant role for foreign workers who have the potential to dominate the archipelago. At the same time, this is considered to shift the participation or role of the board of directors or the position of commissioner of domestic workers.<sup>17</sup>

Job opportunities that should be created by and intended for domestic workers are often interpreted from two perspectives. The first perspective is employment opportunities that will be more profitable for foreign workers because of the expertise and technology they offer, so companies or institutions voluntarily employ them. The second perspective is that with the creation of many job opportunities, the Indonesian population, both residents who have Indonesian citizenship and foreign citizenship because many companies will recruit jobs that can help them escape the abyss of unemployment and poverty.<sup>18</sup>

Regulations regarding job creation have the aim of increasing a sense of justice and a sense of welfare for workers through efforts to improve the investment ecosystem and business or entrepreneurial activities, increase government investment and accelerate national strategic projects, increase worker protection and welfare, as well as facilitate, empower, and community business protection. These efforts require assistance, support, and active participation from all parties so that regulation and its implementation can be more responsive, reactive, and critical to changes and developments in law and the times<sup>19</sup>.

The regulation, which has been in effect for one year since 2020, provides solutions to the problem of using domestic and foreign labor. These efforts at least contain regulations on efforts to protect the employment relationship of a profession according to the provisions of transfer of ability, efforts to protect workers affected by the termination of employment, efforts to protect workers with a period of service according to a specific time work agreement, which is more inclined to welfare and protection for domestic workers, as well as the issuance of permits for foreign workers whose capabilities are still required for the smooth operation of production operations of companies or institutions.

The Job Creation Law is already a renewal of the law mentioned above. However, it still has shortcomings, so a lousy opinion arises among the public. The article above should regulate foreign and domestic workers who are increasingly maintained and their proportions added to the workforce. The percentage of the use of foreign workers must be made clear between one worker or worker and another worker or worker. In addition, the percentage of use of labor must also return to the original purpose of making a law or legislation, namely creating justice and social welfare.<sup>20</sup>

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<sup>17</sup> Riza Fauziah Djazuli, "Dinamika Pengaturan Tenaga Kerja Asing di Indonesia," *Adliya: Jurnal Hukum dan Kemanusiaan* 15, No. 1 (2021): 2-4.

<sup>18</sup> Shanti Dwi Kartika, et al, *Tenaga Kerja Asing: Analisis Politik Hukum*, Yogyakarta: Yayasan Pustaka Obor Indonesia, (2018), p. 40-45.

<sup>19</sup> Dina Susiani, *Perkembangan Hukum Ketenagakerjaan di Indonesia*, Jember: Pustaka Abadi, (2020), p. 46-48.

<sup>20</sup> Farida Sekti Pahlevi, "Keadilan Hukum dalam Peraturan Perlakuan bagi Tahanan," *e-Journal Al-Syakhsyiyah: Journal of Law & Family Studies* 1, No. 1 (2019): 51.

### **3. Solutions to The Problem of Using Foreign Workers in The Government Regulation on The Use of Foreign Workers**

The provisions contained in the Government Regulation on the Use of Foreign Workers are implementing regulations of the Employment Creation Law which explicitly regulates the implementation of the use of foreign workers. These provisions begin with the things that are required to be done and the things that are prohibited from being done by the employer who will employ foreign workers. Employing foreign workers must be in the work contract environment and employment relationship after the decision from the minister by considering suggestions from the relevant agencies or ministries so that foreign workers can hold certain positions as stipulated in the law on job creation.

Employers are charged with the following obligations:

- 1) Appointing Indonesian citizens who are employed as assistant workers for foreign workers due to the transfer of technology and transfer of expertise from foreign workers to domestic workers;
- 2) carry out job education and training for foreign workers accompanying workers on condition that they have met the standard of positions held by foreign workers who they will accompany; and
- 3) repatriate foreign workers after the employment contract ends to their country of origin, except for the positions of directors or commissioners, heads of representative offices, supervisors, administrators, and supervisors of foundations, as well as foreign workers who work temporarily.

This is a follow-up to the law on job creation which is not only limited to domestic workers and foreign workers entitled to education and job training but also requires the readiness of the accompanying workforce.

Matters regarding the existence of complementary workers are not only addressed to domestic workers because they are considered not to provide equality for domestic workers. Further provisions regarding which accompanying workers are employed are foreign workers. Foreign workers who become accompanying workers cannot hold or replace the position of the party they are accompanying. The assistance referred to here relates to the transfer of skills or abilities and the transfer of technology expected after the assistance is carried out to replace the foreign workers he accompanies.

This regulation underlines the focus on education and job training activities for domestic workers. Education and job training can be carried out in Indonesia and abroad. When education and job training are carried out in Indonesia, all or almost all domestic workers can follow them. However, suppose it is carried out abroad. In that case, it is done by sending several domestic workers who meet competency standards to carry out education and job training abroad. Then, the results are taught back to domestic workers. The selection of several domestic workers was carried out not to create discrimination of rights, but as it is known that there are still many domestic workers who do not meet competency standards and work qualifications.

The abovementioned provisions must be accompanied by education and job training for domestic and foreign workers. Indonesian language education is also something employers must do because foreign workers must, at a specific time carry out and complete their work to smooth work and communication to avoid errors in delivery, especially regarding procedures and systems. This is a universal right to realize justice for workers in the employer's work environment.

To employ foreign workers or foreign workers, employers must make a plan to use foreign workers. This is intended so that the regularity of workers entering the territory of Indonesia compared to workers with Indonesian citizenship can run orderly and be recorded in the statistical data of the ministry of human resources. The plan must obtain approval from the minister and fulfill the requirements of obligations and prohibitions for foreign employers and workers, social security for foreign workers, work agreements, and a specific time, including prohibitions for concurrent positions. Things regulated in such a way are a solution to control or require the use of foreign workers.

### **C. Conclusion**

Employment problems in using foreign workers in these several periods are still a topic that is constantly being discussed, both in regulations and implementations. Legal reforms continue to be carried out and evaluations are carried out on the operation of such a law in society, such as the renewal of provisions in the articles of the Job Creation Law and the enactment of its implementing regulations. Criticisms and suggestions continue to be issued by legal experts and legal observers on the problems that arise due to the ratification and enactment of the law and its implementing regulations.

Starting from the problem of competitiveness with technology and expertise or the quality or competence of human resources from foreign workers, the problem of adding a foreign investment climate, the problem of domination of foreign workers, to the issue of obligations and prohibitions for foreign workers. The law and its implementing regulations already regulate provisions that can be a solution if problems arise in the articles and their implementation. However, they are still unable to resolve the problem as expected by all parties so it is necessary to continue to evaluate and update them.

The global pandemic has accelerated steps for the government to encourage foreign investment into the archipelago. This causes national economic growth to grow and return to standard step by step. However, this step also has a negative and positive impact, namely the intense competition for recruitment between foreign and Indonesian national workers. Foreign investment is suitable if this can be the government's focus in the future. Still, it must also be focused on Indonesian workers to ensure their rights to get jobs and a decent living, not to become slaves to foreigners in their own country.

### **Acknowledgment**

The author expresses gratitude to God Almighty because with the abundance of blessings and gifts from Him, the writing of this journal article can be completed on time. The author also wishes to thank his family and friends who have supported and provided criticism and suggestions in writing this journal article. In addition, the authors would like to thank the Lecturer of Employment Law, Faculty of Law, State University of Semarang, who has provided valuable opportunities for students in scientific writing, especially journal article writing, and supporting scientific publications. This journal article is expected to provide benefits. It can provide knowledge and contribute to solving labor law issues for the government and the Indonesian people, especially in foreign labor regulation.

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