



## Addressing Foreign Worker Regulations in Indonesia Post-Job Creation Law: Challenges and Solutions

*Ayu Putri Rainah Petung Banjaransari*

*Universitas Negeri Semarang, Indonesia*

*ayuprpb@gmail.com*

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Article's Information	Abstract
<p><b>Keywords:</b> <i>Foreign Investment; Foreign Workers; Unemployment.</i></p> <p><b>DOI:</b> <a href="https://doi.org/10.25041/constitutionale.v3i1.2558">https://doi.org/10.25041/constitutionale.v3i1.2558</a></p>	<p><b>Abstract</b></p> <p><i>Issues in Indonesia's labor law stem from the influx of foreign workers and their impact on domestic employment. This recurring problem arises as foreign investment brings in experts or laborers from their home countries, often leading to conflicts with local workers. Indonesia's sizable population does not correspond with available job opportunities, resulting in unemployment and economic disparities across regions. Consequently, the renewal of Indonesia's Job Creation Law of 2020 and its accompanying regulations are crucial. This research adopts a normative legal research method, focusing on secondary legal materials to analyze the legal framework and conceptual aspects related to foreign labor regulations post the Job Creation Law. It identifies challenges within the new regulations and proposes solutions to address them effectively.</i></p>

### A. Introduction

The Indonesian government is targeting additional investment to bolster the national economy, which has been significantly impacted by the COVID-19 pandemic. This surge in investments aims to rejuvenate economic growth to pre-pandemic levels. Moreover, investment initiatives aim to foster employment opportunities, bolster economic development, enhance national technological capabilities, promote sustainable economic practices, and elevate social welfare standards, thereby cultivating a competitive national economic landscape. Each



investment plays a crucial role in driving overall economic activity<sup>1</sup>, but it must be complemented by robust infrastructure support.<sup>2</sup>

Investment stands as the drive to economic improvement and employment expansion.<sup>3</sup> However, the intended goals of investment activation have not been fully realized due to an imbalance in investor distribution, particularly between foreign and domestic entities. The current emphasis on attracting foreign investors has led to their predominant presence in the market, as evidenced by the influx of foreign workers and increased foreign investments. Given the substantial capital required for development endeavors in Indonesia<sup>4</sup>, domestic investors are urged to capitalize on the evolving investment climate to propel the national economy forward, especially amid operational disruptions faced by companies amidst the global pandemic.

Changes in the investment climate are influenced not only by economic factors but also by political and governmental dynamics. Particularly, the focus here is on the foreign investment climate. Several factors can impact this climate, including legal certainty and enforcement, regulatory frameworks across regions, adherence to international legal standards, bureaucratic relations, political stability, economic conditions, social harmony, infrastructure availability, intellectual property rights protection, and other supportive elements.

The influx of investment, whether foreign or domestic, brings numerous benefits, particularly in terms of production operations. Foreign direct investment (FDI) serves as a crucial source of capital for development initiatives.<sup>5</sup> As the economy gradually returns to normalcy, companies—be they private, foreign, or domestic—are poised to compete to resume production activities, leading to increased job opportunities. This surge in employment is expected to aid the government's efforts in poverty alleviation and unemployment reduction. Additionally, the resurgence of regional businesses contributes to bolstering the economy at the grassroots level, thereby mitigating regional disparities.

Investment plays a pivotal role in propelling the government towards economic parity with other developing nations, particularly those in Southeast Asia. Indonesia's abundant natural and human resources present a vast opportunity for government, businesses, local investors, and communities to capitalize on. Economic advancement hinges on the expansion of goods and services production within the community's economic landscape.<sup>6</sup>

However, amidst the global pandemic's economic upheaval, the government's inclination toward facilitating foreign investment channels rather than bolstering domestic investment has become evident. This preference has led to a surge in foreign companies setting up operations in Indonesia, consequently influencing the decline in opportunities for domestic workers. The influx of foreign workers has exacerbated the situation, with genuine skills often cited as a pretext for retaining foreign labor over local talent. This trend not only undermines the

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

<sup>2</sup> Muhammad Fadhillah, "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

<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

employment prospects of indigenous workers but also perpetuates a misguided perception of their capabilities within the workforce.<sup>7</sup>

The disparity in quality and quantity between domestic and foreign workers significantly impacts the employment landscape, as domestic workers often lag behind their foreign counterparts in terms of skills and expertise. This discrepancy is exacerbated by the absence of regulations governing the influx of foreign workers, placing undue strain on domestic labor markets. Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia mandates the right to employment and decent livelihoods for all citizens, including domestic workers. It is imperative for the government and lawmakers to uphold this constitutional provision to safeguard the rights of their citizens.

The Job Creation Law has been criticized for its provisions facilitating the entry of foreign investors and the employment of foreign workers, as outlined in Article 45, paragraph (1). However, these provisions are deemed problematic, serving the interests of bureaucrats, foreign investors, and companies at the expense of domestic labor. This paper examines the challenges posed by the implementation of the Job Creation Law and its associated regulations. Furthermore, it proposes reform initiatives aimed at addressing the adverse effects of these regulations on Indonesia's workforce. Central to these efforts is the enhancement of human resources quality, particularly in technological proficiency, to enable domestic workers to compete effectively and fairly with their foreign counterparts.

This research is expected to provide theoretical benefits and practical benefits. This research contributes 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 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 was a normative legal research method commonly referred to as doctrinal legal research, which only used legal sources derived from secondary legal materials. Normative legal research as defined by Soerjono Soekanto and Sri Mamuji is legal research that examines only library materials or secondary data. Meanwhile, Soetandyo Wignjosebroto defined normative legal research as legal research that is conceptualized and developed based on the doctrine adopted by the drafter. A legal approach and a conceptual approaches were carried out by reviewing the law and its implementing regulations as well as concepts or principles related to legal issues that were the research topic.

Research data sources were secondary data obtained from the results of library searches which consisted of primary or primary legal materials, secondary legal materials, and/or tertiary legal materials if necessary. The primary legal material was obtained from the research of legislation or doctrine, commonly referred to as doctrinal legal research. The secondary legal materials were obtained from the results of previous research, legal journals, and the opinions of legal experts. Meanwhile, tertiary legal materials came from legal dictionaries, encyclopedias, and cumulative indexes, which were more of a literature review, such as the meaning of words or combinations of words..<sup>8</sup>

Data were gained from legal materials review and literature research which included theories, concepts, principles, habits, and legal norms that applied in society. Finally, the

<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.

<sup>8</sup> Bachtiar, *Metode Penelitian Hukum*, South Tangerang: UNPAM Press, (2018), p. 55-84.

researcher collected data from tertiary legal materials to support the primary and secondary legal materials.

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

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

This legal research used a constructivist paradigm which was an attempt to understand relative truth. Reality varied according to subjective mental constructions that shaped perceptions of each individual based on social experience, value systems, religion, and culture thus reality could not be observed in general because researchers were required to prove abstract things. Legal research with this paradigm used dialectical and hermeneutic methods, which were carried out by comparing opinions to reach an agreement and by identifying the construction of each person's opinion.

Based on this background, the author examined the paradigm of the relationship between labor regulations and implementation after the enactment of the work copyright law. This research was expected to significantly contribute to the theories, concepts, and principles of employment after the work copyright law. The novelty of this research would 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 implementation of the Job Creation Law has ignited a contentious dialogue between policymakers and the public. This new legislation, heralded as a legal reform, aims to set the stage for enduring laws that are applicable over extended periods. However, nearly two years since its inception, various provisions within the law have come under scrutiny and critique in light of evolving legal landscapes, real-world data, and the formulation of additional regulations within the statutory hierarchy.<sup>9</sup>

Recent discussions surrounding the Job Creation Law have intensified among law enforcers, policymakers, and the Indonesian populace. Initially ratified and enforced in 2020, the law faced a constitutional challenge culminating in a verdict by the Constitutional Court deeming it unconstitutional. Consequently, there's an imperative to revise the law's articles within this two-year timeframe. Many individuals feel marginalized by its implementation, arguing that contrary to its title, the law does not prioritize job creation for Indonesian citizens but rather fosters a landscape conducive to job monopolization by foreign workers.

The introduction of new regulations often triggers comparisons with pre-existing ones, sparking debates over the necessity of repealing outdated laws. However, discrepancies arise

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<sup>9</sup> Ahmad Redi, et al, *Omnibus Law: Diskursus Pengadopsiannya ke dalam Sistem Perundang-Undangan Nasional*, Depok: Raja Grafindo Persada, (2020), p. 21-22.

as not all provisions align with present-day realities. Some clauses fail to adapt to current circumstances, having been exploited since their inception. Moreover, the organic evolution of the law can render certain provisions obsolete or incongruous with real-world conditions, questioning their applicability over time.<sup>10</sup>

The realities on the ground starkly contrast with the meticulously structured provisions outlined in Indonesian laws and regulations, creating an unsurprising disconnect. Many individuals, feeling the brunt of perceived losses, have petitioned for both material and procedural reviews of the law's substance and execution. Acknowledging these field challenges, legal authorities, particularly those within the Constitutional Court, have begun accepting applications for review.

Pre-2020 legal provisions are viewed as out of step with evolving moral norms and the demands of a rapidly modernizing world. In this era, global competition thrives in industry, business, and entrepreneurship, all heavily influenced by technological advancements and digitalization. The shift towards automation necessitates a workforce capable of competing with artificial intelligence, robotics, and other innovations typically spearheaded by foreign experts. Hence, to remain abreast of legal, technological, and societal developments, laws must evolve without compromising the core moral values enshrined in Pancasila, the Constitution, and its preamble.

The amendments introduced in the Job Creation Law entail modifications and/or additions to several provisions of preceding legislation, particularly concerning the influx of foreign investors and workers into the archipelago. These new provisions have emerged as a legal quandary, particularly for domestic laborers. While the influx of investors augurs well for bolstering the national investment climate, the surge in foreign workers under long-term contracts has become a national issue.

The incorporation of foreign investment and the augmentation of foreign labor absorption in Indonesia are governed by various laws and regulations, namely Law Number 25 of 2007 regarding Investment (hereafter referred to as the Investment Law), Law Number 39 of 2009 regarding Special Economic Zones (hereafter referred to as the Special Economic Zone Law), Law Number 2 of 2017 concerning Construction Services (hereafter referred to as the Construction Services Law), and Law Number 13 of 2003 concerning Manpower (hereafter referred to as the Manpower Act), which underwent revisions in the Employment Creation Law and Government Regulation Number 34 of 2021 concerning the Utilization of Foreign Workers (hereafter referred to as the Regulation on the Utilization of Foreign Workers). The issuance of government regulations serves as a subsequent regulatory measure following the enactment of the Job Creation Law.

The Job Creation Law has updated previous provisions to adapt to changing times, aiming to address global challenges affecting foreign investment and employment contracts in Indonesia. However, there's a conflict between the government, which sets these policies, and the public, feeling disadvantaged by them.

The issue lies in implementing these new regulations effectively, particularly regarding the employment of foreign workers. Despite intending to address this problem, public perception of the regulations remains negative. There is a disconnection between the regulations and efforts to enhance the quality of Indonesia's workforce. To tackle this, we need legal reform to ensure justice, certainty, and benefits for the community.<sup>11</sup> This involves revising and harmonizing laws to meet these goals, aligning with principles like those of Gustav Radbruch.

<sup>10</sup> Muhamad Sadi Is, *Hukum Ketenagakerjaan di Indonesia*, Jakarta: Kencana, (2020), p. 143-145.

<sup>11</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 Research* 2, No. 2 (2020): 253-254.

Indonesia's law-making process involves active community participation to address legal challenges, making it responsive to societal needs. Laws are crafted by and for the community to ensure justice and prosperity. Thus, legal reforms, such as updating provisions in the Job Creation Law and related Government Regulations concerning foreign worker usage, should align with the core purpose of law: to serve the community's interests in substance and enforcement.

## **2. Solutions to the Foreign Worker Problems in the Job Creation Law**

The hiring of foreign workers often lacks specific quotas for different industries, leading to potential exploitation by companies. Without regulations governing the frequency or quantity of foreign hires compared to domestic workers, companies may continue to prioritize foreign workers perceived as having superior skills and experience, thus exacerbating the issue.

Developed countries prioritize work efficiency by recruiting highly skilled experts, thanks to advancements in science and technology. This raises the bar for expertise demanded in the workforce. Indonesia, aiming to boost its economy, seeks foreign investment and expertise. Foreign investors inject capital and expertise, while foreign workers are hired as experts or staff from their respective countries.

However, regulations introduced since 2020 to spur job creation have stirred controversy. Employment remains a persistent challenge for policymakers and bureaucrats.<sup>12</sup> Consequently, these regulations have sparked debates among the public. The followings are the key provisions in question, along with proposed solutions:

### **a. Problems and Solutions Offered in the Construction Services Law**

#### **1) Article 33 of the Law on Construction Services**

The lingering issues within the Job Creation Law primarily stem from Article 33, paragraph (1), letter (d) of the Construction Services Law, which underwent revisions. This article dictates the ratio of Indonesian to foreign workers employed, aiming to prioritize domestic employment. However, in practice, companies often prioritize operational efficiency, leading to the substitution of local workers with foreign ones. This discrepancy highlights a flaw in policy implementation.

The influx of foreign workers over a specific period, notably within the last five years since the enactment of the Employment Creation Law and related regulations, serves as a gauge for labor utilization. Statistical data from the Ministry of Manpower reveals fluctuations: 85,974 foreign workers in May 2016, 95,335 in May 2017, 109,546 in May 2018, 93,762 in May 2019, and 92,058 in May 2020. Despite a slight decrease during the initial phase of the COVID-19 pandemic, it failed to create substantial opportunities for domestic workers due to persisting job competition with foreign counterparts.

The provided data show a decline in the influx of foreign workers into Indonesia throughout 2019, 2020, and 2021. These figures are sourced from the Ministry of Manpower's statistical records, encompassing legally documented foreign workers. However, the statistics do not encompass those with illegal status, as many evade immigration authorities or are involved in smuggling. Despite this decline, which is attributed to the global pandemic, it fails to fully address the satisfaction and justice concerns of the Indonesian populace.

Throughout the pandemic, the government persisted in encouraging foreign investment, which typically correlates with an increase in foreign labor. The decrease in foreign worker numbers can be attributed to the moratorium on new permits for employing foreign workers, which remained in effect during the pandemic. Nonetheless, exceptions to this moratorium exist, particularly for foreign workers engaged in national projects such as those deemed strategically vital for the nation.

<sup>12</sup> Dalinama Telaumbanua, *Hukum Ketenagakerjaan*, Yogyakarta: Deepublish, (2019), p. 1-4.

Exceptions granted to foreign workers for specific national projects must adhere to certain terms and conditions. These exceptions necessitate written special permission, granted based on the evaluation of the relevant institution, agency, service, or ministry, with a focus on adhering to health protocols. Additionally, exceptions are made for foreign workers whose contracts are extended or whose work agreements are renewed while still in Indonesia at the request of their employers.

According to data from the Ministry of Manpower as of May 2021, the influx of foreign workers into Indonesia spans various sectors. Specifically, 50,688 foreign workers are employed in the service sector, 39,153 in industry, and 2,217 in the maritime and agriculture sectors. Despite the abundance of foreign workers across various fields, who often possess advanced skills, they still outnumber domestic workers in terms of quality and pivotal role in production operations, particularly in technology expertise and knowledge transfer.

To mitigate the perceived favoritism towards foreign workers with superior abilities, the Job Creation Law introduces new provisions aimed at preventing or minimizing such biases. Domestic workers sometimes struggle with feelings of inadequacy regarding the quality, intelligence, or expertise of their foreign counterparts. Hence, the law delineates the rights and obligations of both employers and foreign workers, emphasizing the importance of respecting and valuing domestic labor.

## 2) Article 42 of the Construction Services Law

The Job Creation Law outlines rules for employers to fulfill obligations within the framework of plans for employing foreign workers sanctioned by the Central Government.<sup>13</sup> This provision exempts specialized foreign workers engaged in operational production activities, which may be terminated due to sabbaticals, technology-driven startups, emergencies, business visits, or research within specific timeframes. Such exemptions aim to maintain favorable diplomatic ties with the technology's country of origin and its inventors.

Furthermore, the law revises provisions concerning the hiring of foreign workers. It specifies conditions under which employers, individuals, or entities are prohibited from employing foreign workers, unless explicit permission is granted. Additionally, the law establishes criteria for foreign workers eligible to work in Indonesia, restricting their roles to specific positions and durations as outlined in contracts or agreements, contingent upon relevant competencies.

Moreover, the legislation prohibits foreign workers from occupying managerial roles involving access to sensitive data, formulas, or company secrets. This restriction is crucial, particularly in the case of regional, national, or international companies, especially those of local or national origin. Such measures aim to safeguard sensitive information within the country's business landscape.

## 3) Article 45 of the Construction Services Law

The Job Creation Law has introduced amendments to several provisions within this article. Firstly, it revises the obligations of employers regarding foreign workers, particularly in appointing Indonesian citizens as assistants or counterparts to foreign workers engaged in technology transfer or skill development. This aims to facilitate the transfer of expertise from foreign workers to domestic counterparts.

Secondly, the law modifies the obligation to provide education and job training to Indonesian citizens, tailored to the requirements of positions held by foreign workers. This emphasis on workforce development is crucial for enhancing operational efficiency and achieving organizational objectives.

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<sup>13</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.

Thirdly, the amended law addresses the repatriation of foreign workers upon the conclusion of their employment contracts, without special provisions for contract extensions. This underscores the importance of cultivating a skilled domestic workforce capable of seamlessly replacing foreign counterparts, thereby reducing reliance on foreign labor within companies or agencies.

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

This article has been revised to include a provision requiring employers to provide specified compensation for each employed foreign worker. However, certain exceptions to this obligation exist, such as for employers representing foreign countries, government institutions, religious and social organizations, specific positions within educational institutions, and international bodies. These provisions and exceptions are perceived as advantageous to foreign workers, ensuring fair compensation and equitable treatment between foreign and domestic workers.<sup>14</sup>

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

- a) Register business entities, expert appraisers, workers, and labor experience.
- b) Develop educational institutions and job training programs in the construction sector to be professional and effective.
- c) Accredite associations and suppliers of construction services, as well as professional associations and certification agencies.
- d) Establish work certification agencies to carry out competency or work quality certification activities that have not been addressed by existing professional certification agencies established by associations or educational and job training institutions.
- e) Assign expert appraisers to assess failed building conditions, and ensure that foreign workers are treated equally with domestic workers.

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

Article 150 of the Job Creation Law encompasses the Special Economic Zone Law. An amendment to Article 41 introduces a new provision stipulating that the plan to employ foreign workers in directorial or commissioner roles will only be ratified once. The validity of this ratification extends for as long as foreign workers hold such positions. This regulation highlights the significant role of foreign workers in potentially dominating the archipelago, while also potentially altering the participation of domestic workers in directorial or commissioner positions.<sup>15</sup>

The creation of job opportunities, intended for domestic workers, is often viewed from two perspectives. Firstly, as opportunities more lucrative for foreign workers due to their expertise and technology contributions, leading companies or institutions to voluntarily employ them. Secondly, as a means for the Indonesian population, both citizens and non-citizens, to escape unemployment and poverty through increased job availability.<sup>16</sup>

Efforts to regulate job creation aim to enhance justice and welfare for workers by improving the investment ecosystem, fostering business and entrepreneurial activities, increasing government investment, accelerating national strategic projects, enhancing worker protection and welfare, as well as facilitating and empowering community business endeavors. These endeavors necessitate collaboration and active participation from all stakeholders to

<sup>14</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.

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

<sup>16</sup> Shanti Dwi Kartika, et al, *Tenaga Kerja Asing: Analisis Politik Hukum*, Yogyakarta: Yayasan Pustaka Obor Indonesia, (2018), p. 40-45.



ensure responsive and adaptive regulation and implementation in the face of legal and societal developments.<sup>17</sup>

While the Job Creation Law represents a legal renewal, it still exhibits shortcomings, eliciting negative opinions from the public. The article should address the increasing presence of both foreign and domestic workers in the workforce and establish clear proportions for their utilization. Furthermore, the legislation should align with its original purpose of promoting justice and social welfare through labor policies.<sup>18</sup>

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

The Government Regulation on the Use of Foreign Workers serves as implementing regulations for the Employment Creation Law, specifically governing the utilization of foreign workers. These provisions outline both requirements and prohibitions for employers intending to hire foreign workers.

Employers must engage foreign workers within the framework of work contracts and employment relationships, following ministerial decisions informed by recommendations from relevant agencies or ministries. This ensures that foreign workers occupy specific positions as prescribed by the Job Creation Law.

Employers are charged with the following obligations:

- 1) Appoint Indonesian citizens as assistant workers for foreign workers to facilitate the transfer of technology and expertise from foreign workers to domestic workers.
- 2) Provide job education and training for foreign workers' accompanying workers, ensuring they meet the standards required for the positions held by the foreign workers they will accompany.
- 3) Repatriate foreign workers to their country of origin after the employment contract ends, except for positions such as directors or commissioners, heads of representative offices, supervisors, administrators, and supervisors of foundations, as well as foreign workers who work temporarily.

The follow-up to the Job Creation Law extends beyond the scope of domestic and foreign workers to encompass the readiness of auxiliary personnel. Addressing the presence of auxiliary workers is not solely confined to domestic workers, as this might be perceived as unequal treatment. Instead, the focus is on foreign workers who serve as auxiliary personnel. These foreign workers, while accompanying others, are not permitted to assume or substitute the positions of those they are accompanying. Their role primarily involves facilitating skill and technology transfer to local counterparts.

This regulation underscores the importance of education and training for domestic workers, which can be conducted domestically or abroad. While most domestic workers can participate in local training, for overseas training, selection is based on competency standards. This approach aims to ensure equitable opportunities, acknowledging that not all domestic workers meet the required standards.

Additionally, employers are obliged to provide Indonesian language education for foreign workers to facilitate effective communication and workflow, minimizing errors, particularly concerning procedures and systems to ensure fairness and equality in the workplace environment.

To employ foreign workers, employers must devise a plan approved by the minister, ensuring the orderly entry and recording of workers in Indonesia's statistical data. This plan must adhere to regulations regarding obligations and prohibitions for both employers and

<sup>17</sup> Dina Susiani, *Perkembangan Hukum Ketenagakerjaan di Indonesia*, Jember: Pustaka Abadi, (2020), p. 46-48.

<sup>18</sup> Farida Sekti Pahlevi, "Keadilan Hukum dalam Peraturan Perlakuan bagi Tahanan," *e-Journal Al-Syakhshiyah: Journal of Law & Family Research* 1, No. 1 (2019): 51.

foreign workers, social security provisions, employment contracts, and specific timeframes, including restrictions on concurrent positions. Such regulations provide a framework for controlling and managing the utilization of foreign workers.

### C. Conclusion

The employment challenges associated with the utilization of foreign workers remain a recurrent topic of discussion, both in terms of regulatory frameworks and their practical implementations. Ongoing legal reforms and evaluations of the Job Creation Law and its implementing regulations are indicative of the continuous scrutiny surrounding this issue. Legal experts and observers consistently provide criticisms and suggestions regarding the law's impact and effectiveness in addressing these challenges.

From concerns about competitiveness in technology and expertise, to issues surrounding foreign investment climate and the potential dominance of foreign workers, various aspects are under scrutiny. While the law and its regulations offer provisions aimed at addressing these concerns, they may not fully resolve the issues to the satisfaction of all stakeholders, necessitating ongoing evaluation and updates.

The global pandemic has prompted the government to accelerate efforts to attract foreign investment, which, in turn, contributes to national economic growth. However, this acceleration also brings about both positive and negative impacts, including heightened competition for employment opportunities between foreign and Indonesian workers. While foreign investment is crucial for economic development, it is imperative that the government maintains a focus on safeguarding the rights of Indonesian workers, ensuring they have access to employment and decent living standards, without risking exploitation or becoming marginalized in their own country.

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