



Legal Policy Dynamics of the Foreign Workers in Indonesia: Should it be justified?

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Abstract

The enactment of Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers and Job Creation Law has triggered pros and cons. On the one hand, these arrangements define as advanced approach to increase investment in Indonesia and assist transfer knowledge that can be obtained from equipped foreign workers with their skills and technologies. There are substantial arrangements to ease foreign workers access under growth investment idea, facilitating business licensing through deregulation, and scrutinize legal provisions for foreign workers to be able to work in Indonesia. This article was aimed to analyze, and finding analysis of policy dynamics regulating the use of Foreign Workers in Indonesia, as well as the gaps of the use of Foreign Workers arrangement in the Job Creation Law. This article was normative legal research using statutory approach, and conceptual approach. The study indicated that the dynamics of regulation in various legal policies on the use of Foreign Workers especially between Law on Employment and Law on Job Creation, even though there are fields and types of work that are also required to prioritize Indonesian Workers, along with the use of Foreign Workers to a certain time limit to adopt Foreign Workers skills. The prospective policy direction through this article is expected to be more selective policy in the context of utilization of foreign workers, state protection, and adequate improvement quality/standard of competence for Indonesian workers.

1. Introduction

The essence of state intervention to protect their local workers, as derivate from welfare state concept grounded with opportunity equality, wealth distribution, and public responsibility to the poor people for access to the adequate life standard,¹ as well as

¹Pierson, C. (1998). *Beyond a Welfare State? The New Political Economy of Welfare*, Second Edition, T.J. International and Pennsylvania State University Press University Park, Padstow-Pennsylvania, pp. 6-7.

social welfare, economic welfare, and state welfare.² Based on this concept, Indonesia also considers welfare state as inseparable part of national purpose that regulates in the Fourth Paragraph of the 1945 Indonesia Constitution Preamble. This arrangement was recognize welfare state as a state fundamental instrument,³ people prosperous consideration,⁴ and legal ground for national development with active role from state to implement national development agenda,⁵ also in government protection and their partiality to the Indonesia workers.

Legal protection for Indonesia workers is considered as constitutional obligation,⁶ especially in the Article 27 Paragraph (2) the 1945 Indonesia Constitution that recognize state to ensure right for citizen to their works and adequate life within humanity values. Recently, globalization and the 4.0 Industrial Revolution shift and accelerate investment, labor migration, and free trade between states causes rapid foreign workers employed by any companies around world.⁷

Global development demands any countries in the world, both developed or developing countries to compete for their competitiveness in global arena, several approaches was implemented by any countries, especially developing countries deregulate and tackle any obstacles to the ease of foreign workers employ with aims to accelerate national development. It means that manpower issues have importance and fundamentally affected any national development schemes towards welfare and prosperity.⁸ The use of foreign workers as critical issues that facing by any countries in the world, including Indonesia, as the consequences became international trade community members, like World Trade Organization (WTO), ASEAN-China Free Trade Area (ACFTA) and ASEAN Economic Community (MEA), every countries should ease of foreign workers access to national job fields, and create free competition between local workers with foreign workers to any job positions. This issue was raises and agreed in regional level, ASEAN has been declared the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community in 2015, ASEAN state members should be implementing ASEAN Economic Community framework into four pillars of AEC blueprint, in this context, the ease of foreign workers in ASEAN territories following first pillars called as Single Market and Production, in the Core

²Jensen, C., Wenzelburger, G. & Zohlnhöfer, R. (2019). Dismantling the Welfare State? After Twenty-five years: What have we learned and what should we learn?, *Journal of European Social Policy*, 29(5), 681-691, DOI: <https://doi.org/10.1177/0958928719877363>, pp. 683-685.

³Aryani, N.M. & Hermanto, B. (2018). Gagasan Pengaturan yang Ideal Penyelesaian Yudisial maupun Ekstrayudisial Pelanggaran Hak Asasi Manusia di Indonesia", *Jurnal Legislasi Indonesia*, 15(4), 369-383, h. 371-372.

⁴Syafi'ie, M. (2012). Instrumentasi Hukum HAM, Pembentukan Lembaga Perlindungan HAM di Indonesia dan Peran Mahkamah Konstitusi, *Jurnal Konstitusi*, 9(4), DOI: 10.31078/jk%k, 681-712, h. 683-684.

⁵Azhari, A.F. (2012). Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi, *Jurnal Hukum Ius Quia Iustum*, 19(4), 489-505, DOI: <https://doi.org/10.20885/iustum.vol19.iss4.art1>, h. 497-499.

⁶Hosen, N. (2007). Human Rights Provisions in the Second Amendment to the Indonesian Constitution from *Shari'ah* Perspective, *The Muslim World*, 97(2), 200-224, pp. 204-206.

⁷Li, T.M. (2017). The Price of Un/Freedom: Indonesia's Colonial and Contemporary Plantation Labor Regimes, *Comparative Studies in Society and History*, 59(2), 245-276, DOI: 10.1017/S0010417517000044, pp. 247-248.

⁸Setiyono, B. (2018). *Model & Desain Negara Kesejahteraan*, Cetakan Pertama, Nuansa Cendekia, Bandung, h. 53.

Elements A.5., every ASEAN members should be ensuring free flows of skilled labor, including to facilitate movement of skilled labor.

Based on several data that compiled by civil society organization and government data showing that the number of foreign workers in Indonesia reach 92.058 workers until May 2021,⁹ if compared with 2020, there is decreasing caused by Covid-19 pandemic, in 2020, foreign workers number in Indonesia reach 98.902 workers from any countries, with the five largest number was contributed by China (35.781 workers or equal with 36,17%), Japan (12.823 workers), South Korea (9.097 workers), India (7.356 workers), and Malaysia (4.816 workers).¹⁰ According to these data, it determines almost foreign workers in Indonesia were employed with higher position that local workers like professional, manager, commissioner, consultant, and technician.¹¹

Regarding foreign workers employ arrangement, the Indonesia Government was regulating this matters starting with Law on Foreign Workers Placement 1958, Law on Employment 1997, and Law on Employment (Law Number 13 of 2003) with specific regulations as derivation from the Law on Employment 2003. This Law was enacted as the part of *Reformasi*, with aims to recognize workers role in national development, and their important role or position to accelerate national agenda.¹² The local workers protection is to ensure basic rights of workers, equality work opportunities, non-discriminative act in any forms to themselves and their families prosperity, while still encourage business and industries interest.¹³

Law on Employment 2003, especially in the Chapter III concerning Equal Opportunities and Treatment, in Article 5 and 6 regulates that every Indonesian has equal opportunities to gain their job and equal treatment in their job.¹⁴ The Elucidation of the Law on Employment 2003 also stresses these arrangements, in relations with non-discriminatory treatment to everyone in workers recruitments, because Indonesia as diversity nations should be strengthened based on unity and respect diversity. This principle is cannot to be apply for foreign workers, because there is obligations both government and business sector prioritizing local workers to work in Indonesia and prosper their country.¹⁵

⁹Asmara, C.G. (2021). "Terungkap, Ini Jumlah Tenaga Kerja Asing yang Bekerja di RI", URL: <https://www.cnbcindonesia.com/news/20210525130123-4-248217/terungkap-ini-jumlah-tenaga-kerja-asing-yang-bekerja-di-ri>, diakses tanggal 20 Juni 2021, Pukul 09.46 WITA, h. 1.

¹⁰Laoli, N. (2021). "Jumlah Tenaga Kerja Asing di Indonesia 98.902 TKA China Terbesar", URL: <https://nasional.kontan.co.id/news/jumlah-tenaga-kerja-asing-di-indonesia-98902-tka-china-terbesar-berikut-datanya>, diakses tanggal 20 Juni 2021, Pukul 09.51 WITA, h. 1.

¹¹Gus (CNBC Indonesia) (2019). " Tenaga Kerja Asing di RI Meroket 38% Terbanyak dari China", URL: <https://www.cnbcindonesia.com/news/20190908075511-4-97843/tenaga-kerja-asing-di-ri-meroket-38-terbanyak-dari-china>, diakses tanggal 1 Desember 2019, Pukul 09.57 WITA, h. 1.

¹²Hadiprayitno, I.I. (2010). Defensive Enforcement: Human Rights in Indonesia, *Human Rights Review*, 11(3), 373–399, DOI: 10.1007/s12142-009-0143-1, pp. 377-378.

¹³Warnecke, T. & de Ruyter, A. (2012). The Enforcement of Decent Work in India and Indonesia: Developing Sustainable Institutions, *Journal of Economic Issues*, XLVI(2), 393-401, DOI 10.2753/JEI0021-3624460214, pp. 397-398.

¹⁴Yusa, I.G., Hermanto, B. & Aryani, N.M. (2020). No-Spouse Employment and the Problem of the Constitutional Court of Indonesia, *Journal of Advanced Research in Law and Economics*, 11(1(47)), 214-226, DOI: [https://doi.org/10.14505/jarle.v11.1\(47\).26](https://doi.org/10.14505/jarle.v11.1(47).26), pp. 217-218.

¹⁵Supramono, G. (2019). *Hukum Orang Asing di Indonesia*, Sinar Grafika, Jakarta, h. 50.

Foreign workers arrangement was regulates since enactment of Law on Foreign Workers Placement (Law Number 3 of 1958), then it was revoked and regulates in further with special chapter in Law on Employment 2003 (Chapter VIII concerning the Use of Foreign Workers, in the Article 42 until Article 49). The Article 42 Paragraph (1) Law on Employment 2003 specifically arranged that every employer who employed foreign workers shall have written permit from Minister or appointed officers. This arrangement was requirement for employer, when foreign workers was employed should not cause negative impact especially in security and reduced work opportunity for Indonesian workers.

The use of foreign workers implicated new capital flows, new investment opportunity,¹⁶ and sharing or transfer of knowledge with their developed know how and skills.¹⁷ The work fields or types also should prioritize Indonesia workers and use foreign workers until certain time limit until Indonesia workers could adopt their skills or any knowledge, and the use of foreign workers should be selective in terms of Indonesian workers empowerment¹⁸.

Previous researches that conducted by others just specifically focus on one terms or substance in arrangement of foreign workers, Jazuli Ahmad explained that the foreign workers existence in Indonesia shift social polemic especially after enactment of Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers, that philosophically to ease investment flows in Indonesia caused by rapid foreign workers flows in Indonesia after enactment of this Presidential Regulation.¹⁹ Djazuli revealed that foreign worker permit was scrutinized by the arrangement Article 9, Article 10 Paragraph (1), Article 19, and Article 26 of this Presidential Regulation with aims to ease foreign workers access to Indonesia job fields and it is contrary with Law on Employment 2003.²⁰ While this Law also paid attention and criticized by any social holders worrying, as explained by Pottag, the foreign workers could reduce significantly job fields for Indonesia workers.²¹ Djulius also revealed it was widely spread new gap between local and foreign workers caused by investment and transfer of technology flows.²² Hence, these controversial arrangements was strengthened with Minister of Manpower Regulation Number 10 of 2018 concerning the Procedure of the

¹⁶Goh, C., Wee, K. & Yeoh, B.S.A. (2017). Migration governance and the migration industry in Asia: moving domestic workers from Indonesia to Singapore, *International Relations of the Asia-Pacific*, 17(3), 401-433, DOI: <https://doi.org/10.1093/irap/lcx010>, pp. 408-409, 415-416.

¹⁷Nurhidayati, N. (2019). Perizinan Tenaga Kerja Asing, Kebijakan dan Implementasinya, *Widya Cipta: Jurnal Sekretari dan Manajemen*, 3(2), 241-248, DOI: <https://doi.org/10.31294/widyacipta.v3i2.6444.g3557>, pp. 244-245.

¹⁸Widiatedja, I.G.N.P. (2021). Fragmented Approach to Spatial Management in Indonesia: When it Will Be Ended?, *Kertha Patrika*, 43(2), 145-166, DOI: <https://doi.org/10.24843/KP.2021.v43.i02.p03>, p. 160.

¹⁹Jazuli, A. (2018). Eksistensi tenaga kerja asing di Indonesia dalam perspektif hukum keimigrasian. *Jurnal Ilmiah Kebijakan Hukum*, 12(1), 89-105. DOI: <http://dx.doi.org/10.30641/kebijakan.2018.V12.89-105>, pp. 90, 93.

²⁰Djazuli, R.F. (2021). Dinamika Pengaturan Tenaga Kerja Asing di Indonesia, *Jurnal Hukum dan Kemanusiaan*, 15(1), h. 2.

²¹Pottag, A.T. (2018). Politik Hukum Pengendalian Tenaga Kerja Asing yang Bekerja di Indonesia, *Media Iuris*, 1(2), 236-250, DOI: <http://dx.doi.org/10.20473/mi.v1i2.8827>, pp. 245-247.

²²Djulius, H. (2017). Foreign direct investment and technology transfer: Knowledge spillover in the manufacturing sector in Indonesia, *Global Business Review*, 18(1), 57-70, DOI: <https://doi.org/10.1177/0972150916666878>, pp. 57-59.

Use of Foreign Workers that also widely criticized, that there is unclear mechanism to supervise foreign workers both in their numbers and existence in Indonesia.²³

The debate to justifying ease of foreign workers access in Indonesia could be determined starting from statutory laws validity, as the consequence of arrangement Article 1 Paragraph (3) the 1945 Indonesia Constitution, that Indonesia as the rule of law state, the written regulations should be used to regulate and create social order.²⁴ This is in line with Gustav Radbruch as quoted by Mawar and Bohlander, validity is the main principles for any regulations to be enter into force,²⁵ it is should be reflects justice, legal benefits (*zweckmaszigkeit*), and legal certainty as basic values of law,²⁶ that reflected in statutory laws considerations.²⁷

By referring to the applicability of the law essence, this article contributes to be argumentative analytical frameworks related with legal policy dynamics of the use of foreign workers, since the enactment Law on Employment 2003, Presidential Regulation Number 20 of 2018, and drastic reformulation by enactment of Law on Job Creation (Law Number 11 of 2020), that enacted to create widely investment in Indonesia, with revoking several articles in the Law on Employment that shift ease of foreign workers in Indonesia.

Based on legal background that explained earlier, this article focus on two legal issues that study, analyze, and find argumentation related with **first**, how legal policy arrangement dynamics regarding the use of foreign workers in Indonesia?, and **second**, how about consideration and reformulation of the use of foreign workers in the Law on Employment after enactment of the Law on Job Creation?

2. Research Method

This article was researched with portraying itself as a legal research, based on normative legal research or doctrinal legal research that placing law as prescriptive discipline²⁸ and also focusing on law as norms system or statutory laws.²⁹ It is strengthened with primary and secondary legal materials and informative legal materials. The discussion on two main issues in this article based on three approaches that used including statutory law approach, and conceptual approach. The legal materials collected with literature and documents study, and it is analyzed to create

²³Laksono, P. (2018). Pengawasan Perizinan Tenaga Kerja Asing, *Supremasi Hukum: Jurnal Penelitian Hukum*, 27(1), 74-91, DOI: <https://doi.org/10.33369/jsh.27.1.74-91>, pp. 81-83.

²⁴Suartha, I.D.M., Puspitosari, H. & Hermanto, B. (2020) Reconstruction Communal Rights Registration in Encouraging Indonesia Environmental Protection, *International Journal of Advanced Science and Technology*, 29(3s), 1277-1293, pp. 1285-1286.

²⁵Mawar, S. (2020). Metode Penemuan Hukum (Interpretasi dan Konstruksi) dalam Rangka Harmonisasi Hukum, *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial*, 1(1), 22-38, DOI: <http://dx.doi.org/10.22373/justisia.v1i1.2558>, h. 29-30.

²⁶Bohlander, M. (2011). Radbruch redux: the need for revisiting the conversation between common and civil law at root level at the example of international criminal justice, *Leiden Journal of International Law*, 24(2), 393-410, DOI: <https://doi.org/10.1017/S0922156511000070>, pp. 399.

²⁷Spaak, T. (2009). Meta-ethics and legal theory: The case of Gustav Radbruch, *Law and Philosophy*, 28(3), 261-290, DOI: 10.1007/s10982-008-9036-8, pp. 267-271.

²⁸Choudhury, N. (2017). Revisiting Critical Legal Pluralism: Normative Contestations in the Afghan Courtroom. *Asian Journal of Law and Society*, 4(1), DOI: 10.1017/als.2017.2, p. 231.

²⁹Petroski, K. (2013). Legal Fictions and the Limits of Legal Language. *International Journal of Law in Context*, 9(4), 485-505, DOI: 10.1017/S1744552313000268, p. 488.

problem solving description, legal materials systematization, interpretation, evaluation of research results, and legal argumentation towards two main issues that carried in this article, the results of this research was created into argumentative analytic descriptive article.³⁰

3. Result and Discussion

3.1. Legal Policy Arrangement Dynamics regarding the Use of Foreign Workers in Indonesia

The study of legal policy arrangement in this article cannot be separated with stage that provided to evaluate public policy.³¹ It is related with public policy making process that recognized by any academicians and practitioner as a complex process that including some processes and related variable, and it should be analyzed in comprehensive manner³². William N. Dunn revealed that there are five main stages in public policy making process, are agenda arrangement stage, policy formulation stage, policy adoption stage, policy implementation stage, and policy evaluation stage.³³ In this article, the legal policy arrangement dynamics was examined with policy evaluation stage, that any implemented policy are evaluate to showing policy impact with goals or agenda setting, solving problem that faced by peoples cause by policy implementation with any measurements or criteria as the ground to examine the policy is impacting or not based fixed government goals.³⁴ In this context, the evaluation is conducted to the any public policy making process stages, so policy evaluation including policy substance, policy implementation and policy impact, and further government action that should be taken, whether postponement, revoking, reformulation or amending any policies.³⁵

The foreign workers policy evaluation could be examined starting from **first**, the specification as an important sub-activity regarding the way to examine or deciding "benefit" from any policies. **Second**, the measurement including collecting relevant and valid information for evaluation purpose, **third**, the analysis as the sub-activity that focusing to the information adsorption and usage that collected to create conclusion that reflected government openness, and **fourth**, the recommendation as the final sub-activity to determine further action that should be taken and also reflects

³⁰Wibisana, A.G. (2019). Menulis di Jurnal Hukum: Gagasan, Struktur, dan Gaya, *Jurnal Hukum & Pembangunan*, 49(2), 471-496, pp. 472-473.

³¹Sururi, A. (2016). Inovasi Kebijakan Publik (Tinjauan Konseptual dan Empiris), *Sawala: Jurnal Administrasi Negara*, 4(3), 1-14, DOI: <https://doi.org/10.30656/sawala.v4i3.241>, h. 2-3.

³²Yusa, I.G., Hermanto, B., and Ardani, N.K. (2021). Law Reform as the Part of National Resilience: Discovering Hindu and Pancasila Values in Indonesia's Legal Development Plan, *International Proceedings of the International Conference for Democracy and National Resilience (ICDNR 2021): Advanced in Social Science, Education, and Humanities Research*, 620(1), 1-10, DOI: <https://doi.org/10.2991/assehr.k.211221.001>, pp. 3, 6.

³³Dunn, W.N. (2008). *Public Policy Analysis An Introduction*, Fourth Edition, Pearson Education Princeton Hall Inc., Upper Saddle River, New Jersey, pp. 6-7.

³⁴Permatasari, I.A. (2020). Kebijakan Publik (Teori, Analisis, Implementasi dan Evaluasi Kebijakan), *TheJournalish: Social and Government*, 1(1), 33-37, h. 34-35.

³⁵Faried, F.S. & Suparwi, S. (2019). Evaluasi Implementasi Kebijakan Publik terhadap Peraturan Daerah Bermasalah, *Jurnal Supremasi*, 9(2), 28-38, DOI: <https://doi.org/10.35457/supremasi.v9i2.716>, h. 33-34.

government openness.³⁶

In broader context, the policy evaluation that used in this article to examine the dynamics of legal policy regarding the use of foreign workers in Indonesia, that used as analysis and procedural tools to the problematic issues regarding foreign workers access in Indonesia. It also determine with evaluative research that investigate policy program and anything behind policy problems to collect information and examine policy both in process and results, and policy cycle that supported information report that used in policy making process.³⁷

The use of foreign workers arrangement in Indonesia cannot be separated with *wetgeving* as explained by A. Hamid S. Attamimi with quoting Legal Dictionary *Fockema Andreae*, that *wetgeving* as (a) the act to making state regulations in central or regional level based on the statutory law making procedures; and (b) all of state regulations in the central and regional level, that called as statutory laws, that reflected as (a) legal norms (*rechtsnormen*); (b) externally in scope (*naar buiten werken*); and (c) general in broader context (*algemeenheid in ruime zin*).³⁸ However, in this article, the legal policy arrangement dynamics regarding the use of foreign workers in Indonesia should be understood as *wetgeving* with statutory laws context related with the use of foreign workers in Indonesia.

The Foreign Workers policies that examine from arrangement perspective as statutory laws, showing that there are dynamics arrangement,³⁹ while, there is arrangement that enacted before 1998 or *reformasi* era, and it was develops especially after *reformasi* era, after enactment Law on Employment 2003, there is Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers and Minister of Manpower Regulation Number 10 of 2018 concerning the Procedure of the use of Foreign Workers, with aims to create investment opportunity with ease of foreign workers access. In the end 2020, the Government also enacted Law on Job Creation that revise and revoking several articles in the Law on Employment 2003, and it is strengthened with Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers.

A. Presidential Decree Number 75 of 1995 and Law Number 25 of 1997 concerning Manpower

As observed by the authors, the national policies regarding foreign workers was regulated in the Article 2 of the Presidential Decree Number 75 of 1995 concerning the Use of Expatriate Workers, this Decree regulates obligation for employer to prioritize the use of Indonesia workers in any available fields and types of job, except if it were

³⁶Schmiedeberg, C. (2010). Evaluation of cluster policy: a methodological overview, *Evaluation*, 16(4), 389-412, DOI: <https://doi.org/10.1177/1356389010381184>, pp. 391-392.

³⁷Athey, S. & Imbens, G.W.. (2017). The state of applied econometrics: Causality and policy evaluation, *Journal of Economic Perspectives*, 31(2), 3-32, DOI: 10.1257/jep.31.2.3, pp. 18-19.

³⁸Attamimi, A.H.S. (1990). Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara (Suatu Studi Analisis Mengenai Keputusan Presiden yang Bersifat Pengaturan dalam Kurun Waktu Pelita I - Pelita IV), *Disertasi Doktor*, Jakarta: Fakultas Pascasarjana Universitas Indonesia, h. 225-226, 314.

³⁹Santoso, B. (2018). The Obstacles of Labor Inspection in Protecting Workers' Rights in Indonesia, *Journal of Advanced Research in Law and Economics*, IX(5(35)), 1765 - 1770, DOI: 10.14505/jarle.v9.5(35).31, pp. 1767-1768.

not or separately filled by Indonesia workers, the use of Expatriate Workers is permissible until certain time limits. This arrangement has aims to ensure Indonesia workers could adopting any knowledge and skills from Expatriate Workers until they could be independently to apply these knowledge and skills. Moreover, the use of Expatriate Workers was strictly implemented to optimize the empowerment of Indonesia workers.

In this era, the use of Foreign Workers was arranged to determine selective principle and one gate policy. In this context, the arrangement of the use of Foreign Workers still ensuring protection and job opportunities for Indonesia workers, in one hand, and on the other hand, fulfill Indonesia obligation as the part globalized international community. The Law Number 25 of 1997 concerning Manpower, especially in the Chapter X Article 152 until Article 157 regulates Expatriates Workers, that arranging the use of Foreign Workers with any prerequisites including permit from Labor Minister that selectively accepted to ensure technology transfer and optimization of Indonesia workers. Moreover, the Companies that employing Foreign Workers should have the Plan of the Use Foreign Workers that regulates any reasons to use Foreign Workers, role and/or positions of Foreign Workers in the Company Organization Structure, the time limitation to use Foreign Workers, and appointment of employed partner workers for Foreign workers. The Labor Minister has authority to ensuring the use and availability of workers for national development with enacting positions and competence standard for Foreign Workers.

B. Law Number 13 of 2003 concerning Manpower (Law on Employment 2003)

The use of foreign workers arrangement was regulates in the Article 42 to Article 49 Law on Employment 2003, that obliged the employer who use foreign workers should be received written permit, they also should have The Plan for Use of Foreign Workers with any reasons, job types, and time limit to use the foreign workers, the obligation to appoint Indonesia workers as Foreign workers assistant, and the obligation to departing foreign workers back to their homeland after time limit has raises. Theses arrangement could be understood as adequate arrangement to reaching government interest, industries and public market, foreign workers and local workers. It is reflected with local workers protection while the openness and more broader opportunity for local workers to their job fields, while there is limitation for use foreign workers both in their role and existence that in line with state obligation to providing wide opportunity and ensure right to work for local workers.

Regarding job type and job areas, the Law on Employment 2003 arrange limitation for any application and plan of the use of foreign workers, with aims the foreign workers existence could be beneficially to the local workers, with develops their professionalism, skills, independent, and their competitiveness. In this context, there are closed list for any job position that should be obeyed and implemented into companies competence standard by employer.⁴⁰

This is cannot be separated with employment concept, there are any parties in the employment system as stipulates in the Law on Employment 2003, there is need to respect and fulfilling local workers interest, while the other parties interest was

⁴⁰Hamidi, J. & Christian, C. (2016). *Hukum Keimigrasian bagi Orang Asing di Indonesia*, Cetakan Pertama, Sinar Grafika, Jakarta, h. 128.

appropriately articulated and implemented.⁴¹

C. Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers (Presidential Regulation Number 20 of 2018)

The enactment of the Presidential Regulation Number 20 of 2018 raises debates by any social holders caused several articles that contrary with the Law on Employment 2003. Hence, this arrangement was loosening foreign workers access to Indonesia job fields and narrowing Indonesia workers to gain their rights to work as mandated by the 1945 Indonesia Constitution, including **first**, Article 9 regulates that the Plan of the Use of Foreign Workers Approval (*Pengesahan RPTKA*) is the permit to employ foreign workers. **Second**, Article 10 Paragraph (1) regulates that the Employer is not mandatory to have the Plan of the Use of Foreign Workers (*RPTKA*) to employ foreign workers with job position as: (a) shareholders who serve as members of board of directors or members of the Board of Commissioner at the foreign workers employer; (b) diplomatic and consular officers at the representative offices of foreign countries; or (c) foreign workers in the type of work required by the government. **Third**, Article 19 regulates that the immigration officers from Indonesia representation in other countries issued temporary living permit (*VITAS*) not more than 2 (two) days after the application was fully received. **Fourth**, Article 26 Paragraph (1) regulates that every Employer should (a) appoint local workers as Assistant Workers; (b) conduct any workers education and training for Indonesia workers that similar with job qualification that holds by Foreign Workers; and (c) facilitating Indonesia language education and training for Foreign Workers.

D. Minister of Manpower Regulation Number 10 of 2018 concerning the Procedure to Use of Foreign Workers

The enactment of President Regulation Number 20 of 2018 also regulates in further with the Minister of Manpower Regulation Number 10 of 2018 especially regulates the use of Foreign Workers Procedure and Mechanism, including the further arrangement of Article 9 paragraph (1) the Minister of Manpower Regulation Number 10 of 2018 related with the obligation for foreign workers employer who employ foreign workers should have the Plan of the Use of Foreign Workers that issued by the Minister of appointed officers. Also, further arrangement from the Article 10 paragraph (1) the Minister of Manpower Regulation Number 10 of 2018 related with the foreign workers employer is not mandatory to have the Plan of the Use of Foreign Workers (*RPTKA*) for several job positions that regulates in the Presidential Regulation. Article 32 paragraph (2) the Minister of Manpower Regulation Number 10 of 2018 also regulates the data of the use foreign workers including the Plan of the Use of Foreign Workers Approval (*Pengesahan RPTKA*) and notification of the use of foreign workers.

Based on theses arrangement, there are differences that compared between Law on Employment 2003, President Regulation Number 20 of 2018, and the Minister of Manpower Regulation Number 10 of 2018, as explained in below table:

⁴¹Sudharma, K.J.A., Artami, I.A.K. & Rachella, B. (2021). Tinjauan Yuridis Perlindungan Hukum Hak Cuti Haid dalam Undang-undang No. 13 Tahun 2003 tentang Ketenagakerjaan, *Vyavahara Duta: Jurnal Ilmiah Ilmu Agama dan Ilmu Hukum*, 16(1), 1-13, DOI: <http://dx.doi.org/10.25078/vd.v16i1.2068>, pp. 3-4.

Table 1. Comparison between Law on Employment 2003, and President Regulation Number 20 of 2018 regarding the Use of Foreign Workers

Law on Employment 2003	President Regulation Number 20 of 2018	Commentaries
The Employer who employing foreign workers should be have written permit from Minister or relevant appointed Officers (Article 42 Paragraph (1)).	The Plan of the Use of Foreign Workers Approval (<i>Pengesahan RPTKA</i>) is the permit for employing foreign workers (Article 9).	This arrangement is contrary with Law on Employment 2003 especially Article 43 paragraph (1).
The Plan of the Use of Foreign Workers (<i>RPTKA</i>) does not apply to government institutions, international institutions, and foreign representation (Article 43 Paragraph (3)).	The Employer is not mandatory to have the Plan of the Use of Foreign Workers (<i>RPTKA</i>) also for shareholders that enacted as board of director or commissioner members in the Foreign Workers Employer, and foreign workers in any Government special job fields (Article 10 paragraph (1)).	This arrangement was contrary with Law on Employment 2003 causes wider job types, while still recognizing the arrangement in the Article 43 Paragraph (3).
	Immigration Officers from Indonesia Representatives in foreign countries issued VITAS not more than 2 (two) days after the application was completed received.	This brief time limit does not accepted as the ideal timing for issuance of any permits.
	The obligation that should be fulfilled by Employer including Assistant Workers, education and training for Indonesian workers, and facilitate education and training of Indonesia language for Foreign Workers.	This arrangement is not clearly regulates how to determine the number of Assistant Workers.

Source: This is arranged based on relevant Statutory Laws

E. Law Number 11 of 2020 concerning Job Creation (Law on Job Creation)

There are several impacts caused by rapid foreign workers growth in Indonesia especially after enactment Presidential Regulation Number 20 of 2018, any doubt raises with this condition, outsourcing issues also shift any pro and cons, including conception and treatment that faced by local workers that contrary with Law on Employment 2003⁴². The use of workers cannot be separated with disproportional work time and free time as unequal position between workers and business industries, minimum wage in many regions facing some non-technical factors, termination of employment and severance pay both long-term settlement and uncertainty payment matters, imposing sanction, and labor union or workers relations with industrial business sector.⁴³ These issues was recognized as the main problem of employment in Indonesia as considers in the Law on Job Creation, it is also stressed by Teri L. Caraway, according his research concerning the Indonesia Law on Employment 2003, there are legal problems, obstacles and resist Indonesia workers, while there is good will from government and business sector to encourage transfer of technology and knowledge, the arrangements that written in this Law is not adequate to be legal framework for workers issues in Indonesia.⁴⁴ The enactment Law on Job Creation also regulates foreign workers access, especially in the Article 42 Paragraph (1) regarding minimum requirement for Employer who recruit foreign workers, and also it is stresses in the Article 43 Paragraph (3) with limitation job position for foreign workers also for any suspended production activities cause by emergency, vocational, technology based start-up, business trips and certain limited researches.

F. Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers (Government Regulation Number 34 of 2021)

This Government Regulation was enacted as the derivation from the Article 81 number (4) until (11) the Law on Job Creation that revoke and amending several arrangement in the Law on Employment 2003, especially related with minimum requirement for Employer, they only should have the Plan of Use of Foreign Workers (*RPTKA*) and the Approval was confirmed by Minister or relevant Officers in two working days after feasibility assessment published. However, it does not apply to certain job position (Article 6, Article 13, and Article 19 Government Regulation Number 34 of 2021).

Recently, after enactment the Law on Job Creation, in one hand, this Law became prospective legal framework that follows rapid technology, needs, and current conditions especially any obstacles and problems in employment issues. This complexity caused by Industrial Revolution 4.0, digitalization era, and demographic bonus in Indonesia, including rapid flows of foreign workers to work in Indonesia. This table would be summarized legal policy dynamics related with the use of foreign workers after enactment of the Law on Job Creation and Government Regulation Number 34 of 2021.

⁴²Widiatedja, I.G.N.P. and Suyatna, I.N. (2022). Job Creation Law and Foreign Direct Investment in Tourism in Indonesia: Is It Better than Before?, *Udayana Journal of Law and Culture*, 6(1), 62-82, DOI: <https://doi.org/10.24843/UJLC.2022.v06.i01.p04>, pp. 70, 76-77.

⁴³Kementerian Perekonomian, 2020, *Naskah Akademik Rancangan Undang-undang Cipta Kerja*, Kementerian Perekonomian Republik Indonesia, Jakarta, pp. 20-21.

⁴⁴Caraway, T.L. (2009). Labor Rights in East Asia: Progress or Regress?, *Journal of East Asian Studies*, 9(2), 153-186, DOI: <https://doi.org/10.1017/S159824080002976>, pp. 161-162.

Table 2. The Comparison Arrangement of the Use of Foreign Workers after enactment the Law on Job Creation

<p>Law on Employment 2003 (Chapter VIII concerning the Use of Foreign Workers Article 42 until 49)</p>	<p>Law on Job Creation (Chapter IV concerning Manpower in Part Two concerning Manpower)</p>	<p>Government Regulation Number 34 of 2021 (further arrangement from the Article 81 and Article 185 letter b Law on Job Creation)</p>
<p>Article 42 Paragraph (1) was regulates the Employer obligation to have written permit from Minister or relevant officers.</p>	<p>Article 81 number (4) Law on Job Creation that amending Article 42 Law on Employment 2003.</p> <p>In the Article 42 Paragraph (1) amended version, the Employer just should have the Plan of Use of Foreign Workers (RPTKA) that validated by Central Government.</p>	<p>The Government Regulation Number 34 of 2021 as derivation and further arrangement of the Article 81 Paragraph (4) Law on Job Creation. The Employer should have validated version of the Plan of Use of Foreign Workers (RPTKA), if Employer would be employing from other Employer, they should have the RPTKA Approval. In those conditions, Employer should employing foreign workers based on the RPTKA Approval.</p> <p>This approval could be issued based on online applications process, feasibility assessment, foreign workers candidate list online confirmation as the recommendation visa and resident permit issuance for foreign workers in Indonesia.</p> <p>Both Article 41 Paragraph (2) Law on Employment 2003 and Article 81 number (4) Law on Job Creation arrangement still regulates in the Article 9 Government Regulation Number 34 of 2021.</p> <p>The Government</p>

<p>Article 41 Paragraph (2) was regulates prohibition for individual Employer to employ foreign workers.</p> <p>Article 41 Paragraph (3) was regulates that Employer obligation to have permits to employ foreign workers, with exception for who are employed in the foreign representative both diplomatic and consular officers.</p> <p>Article 41 Paragraph (4) regulates that Employer that employing foreign workers with certain job position and certain time only.</p>	<p>Article 41 Paragraph (2) does not revoked/amended.</p> <p>The exception job position was amended, the job position of foreign workers that including as exception from permits, shareholders, diplomatic and consular officers, or foreign workers that employed in suspended production activity type, caused by emergency, vocational, technology based start-up, business trips, and certain limited research.</p> <p>Article 41 Paragraph (4) has been amended with additional clauses, "and they have suitable competences with their possible job positions."</p> <p>Article 41 Paragraph (5) has been amended with</p>	<p>Regulation Number 34 of 2021 was regulates similar arrangement with amended version of the Article 42 Paragraph (3) Law on Employment 2003 (Article 81 number (4) Law on Job Creation and Article 19 paragraph (1)-(8) and Article 20 of this Government Regulation).</p> <p>Government Regulation Number 34 of 2021 also regulates similar arrangement with Article 41 Paragraph (4) Law on Job Creation, and regarding certain job position should be determined by Minister of Manpower after any suggestion from Ministry or relevant institutions.</p> <p>The Government Regulations regulates similar arrangement with Article 81 number (4) Law on Job Creation.</p> <p>This mandated provisions was regulates in further with this Government Regulation.</p>
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<p>Article 41 Paragraph (5) delegating further arrangement concerning certain position and time for foreign workers in the Minister Regulation.</p> <p>Article 41 Paragraph (6) regulates that foreign workers whose working period has expired and it cannot be extended, they can be replaced by other foreign workers.</p>	<p>prohibition for foreign workers employed in HRD position.</p> <p>Revised version of the Article 41 Paragraph (6) delegating further arrangement concerning certain position and time for foreign workers should regulate in the Government Regulation.</p>	
<p>Article 43 of the Law on Employment 2003 regulates that the Employer who employing foreign workers should have the Plan of the Use of Foreign Workers (RPTKA) that approved by Minister or relevant Officials. It is should be included the use of foreign workers reason; job position for foreign workers, and appointed Indonesia workers as assistant.</p>	<p>This arrangement was amended with Article 81 number (5) Law on Employment 2003.</p>	<p>These arrangement that similarly with the Article 81 number (5) Law on Job Creation was regulates in the Article 12- 20 Government Regulation Number 34 of 2021.</p>
<p>Article 44 Law on Employment 2003 regulates that Employer who employing foreign workers should be obeyed job position and standard competence arrangement as stipulates in the Minister Regulation.</p>	<p>Article 81 number (6) Law on Job Creation revoking this article.</p>	<p>This content was not regulated in the Government Regulation as the consequences the Article 81 number (6) Law on Job Creation have been revoking Article 44 Law on Employment 2003.</p>
<p>Article 45 Paragraph (1) Law on Employment 2003 regulates that the Employer who employing foreign</p>	<p>Article 81 paragraph (7) Law on Job Creation has amended the Article 45 Law on Employment 2003.</p>	<p>Amended version of the Article 45 Law on Employment 2003 as stipulates in the Article 81</p>

<p>workers has obligations to appoint Indonesia workers as foreign workers assistant for transfer of technology and skills; and they should conducting education and training for Indonesia workers.</p> <p>Article 45 Paragraph (2) Law on Employment 2003 regulates exceptional clauses for foreign workers. They cannot be employed to board of director and/or board of commissioner position.</p>	<p>The amended version of the Article 45 Paragraph (1) Law on Employment 2003 also regulates the additional obligation for Employer. They should to repatriate foreign workers to their homelands after the end of their work contract.</p> <p>The amended version of the Article 45 Paragraph (2) Law on Employment 2003 just regulates uncertain phrase “employed for certain job position” without further arrangement to explain job position limitation.</p>	<p>number (7) Law on Job Creation was regulates in further with Article 7 paragraph (1) letter (c) Government Regulation Number 34 of 2021, the Employer obligation to repatriate foreign workers to their homelands after the end of their work contract, and facilitate Indonesia language education and training for foreign workers (Article 7 paragraph (2)).</p>
<p>Article 46 Paragraph (1) and (2) Law on Employment 2003 prohibit foreign workers to be employed in personalia and/or certain job position, and it was arranged in further with Minister Regulation.</p>	<p>Article 81 number (8) Law on Job Creation revokes Article 46 Law on Employment 2003.</p>	<p>This arrangement was regulates in the Article 9 until Article 11 Government Regulation Number 34 of 2021.</p>
<p>Article 47 Law on Employment 2003 regulates that Employer should pay compensation for foreign workers whose employed in their companies/business, and it was arranged in further with Government Regulation, with exception for government institutions, foreign representation,</p>	<p>Article 81 number (9) Law on Job Creation amending Article 47 paragraph (3) and revoking Article 47 paragraph (4) Law on Employment 2003, with arranging the nominal and use of compensation regulates in further according to the statutory</p>	<p>In this Government Regulation, especially Part Three concerning Compensation Pay for Foreign Workers regulates that this payment was received by Foreign Workers according to their working time limit in Indonesia (Article 23 paragraph (1)-(2)), with</p>

international/social institutions, religious institutions, and certain job positions in educational sector, as regulates in further with Ministerial Regulation.	law provisions.	billing code payment based on approved foreign workers candidate data, with final form as non-tax state income or regional income (regional retribution), including any exceptional clauses that regulates in the Article 25 Paragraph (1)-(2) Government Regulation Number 34 of 2021.
Article 48 Law on Employment 2003 regulates that the Employer should repatriate foreign workers after the end of their work relations.	Article 81 number (10) Law on Job Creation revoke the Article 48 Law on Employment 2003.	It is regulates as the Employer obligation according to the Article 7 Paragraph (1) letter c Government Regulation Number 34 of 2021.
Article 49 Law on Employment 2003 delegate further arrangement of the use of foreign workers, education and training, and assistant workers by the President Decree.	Article 81 number (11) Law on Job Creation amending Article 49 Law on Employment with delegate further arrangement by the Government Regulation.	This Government Regulation was enacted to revoke Presidential Regulation Number 20 of 2018, and effectively enter into force starting from April, 1 st , 2021.

Source: Analyzed from relevant Statutory Laws

3.2. The Consideration and Problem in the Use of Foreign Workers Arrangement after enactment Law on Job Creation

Article 28D paragraph (2) of the 1945 Indonesia Constitution has been affirmed constitutional rights for everyone both in the context right to work (non-discriminatory treatment based on religion, ethnicity, and others), and rights in work (concretization and implementation of normative rights for workers)⁴⁵, with aims to be legal framework for state and business sector obligation to provide further access and to protect Indonesia workers. Recently, also there are dynamics and debate after enactment Law on Job Creation.

The Law on Job Creation enactment understood as legal breakthrough and controversial Law caused by any formal and material problem that raises due the legislative process of this Law, including minimum efforts by People Representative Council (DPR) to socialize all relevant documents and minutes due drafting process or final draft of the Law on Job Creation. Both Parliament and President partially

⁴⁵Anggono, B.D., Fahmi, K., Madril, O., and Usfunan J.Z. (2021). *BPJS Ketenagakerjaan: Aspek Politik Hukum, Kelembagaan, dan Kepesertaan*, First Edition, Jakarta: RajaGrafindo Persada, pp. 96-98.

evaluate omnibus method to be implemented in the national statutory law making, and there is general thought that Parliament and President suspended all legislative agenda cause the failure to create maximum public participation during Covid-19 pandemic,⁴⁶ and these process could be determined as spontaneous,⁴⁷ to draft and discuss legal substance of the Law on Job Creation that discussed and passed by Parliament,⁴⁸ until enter into force in early November 2020⁴⁹.

One of the most crucial issues raise after enactment the Law on Job Creation is related with manpower issues, including the use of foreign workers. However, there is need to examine any considerations that raises to rearrange the use of foreign workers with main idea to ease foreign workers access to be employed by Employer in any work fields in Indonesia, accelerate investment, and tackling any problem to implement ease of doing business. It can be examined based on legal political perspective,⁵⁰ both from policy stratification in the statutory laws or considerations, general explanation, authentic minutes, authentic documents during law making process was held. These sources could be used to determined basic policy and enactment policy from the Law on Job Creation. This is cannot be separated with fundamental position of the five principles “Pancasila” as the national legal ideas to implement national development goals,⁵¹ as well as revoking old laws and creating new laws that reflected Pancasila values,⁵² and establish strong foundation for national law system could be optimized implemented national ideas.⁵³ In this context, the use of foreign workers as stipulates in the Law on Job Creation could be determined based on legal political behind the

⁴⁶Pusat Studi Hukum dan Kebijakan Indonesia (2020). Pengesahan UU Cipta Kerja: Legislasi Tanpa Ruang Demokrasi, 6 Oktober 2020, URL: <https://pshk.or.id/publikasi/pengesahan-uu-cipta-kerja-legislasi-tanpa-ruang-demokrasi/>, diakses pada 10 Juli 2021, Pukul 08.49 WITA, p. 1.

⁴⁷Saubani, A. (2020). UU Cipta Kerja Mengulang Catatan Buruk Proses Legislasi, 6 Oktober 2020, URL: <https://www.republika.co.id/berita/qhrsw409/uu-cipta-kerja-mengulang-catatan-buruk-proses-legislasi>, diakses pada 10 Juli 2021, Pukul 08.55 WITA, p. 1.

⁴⁸Maharani, T. & Rastika, I. (2020). PSHK: Proses Pembentukan UU Cipta Kerja Abaikan Ruang Demokrasi, 6 Oktober 2020, URL: <https://nasional.kompas.com/read/2020/10/06/12450231/pshk-proses-pembentukan-uu-cipta-kerja-abaikan-ruang-demokrasi?page=all>, diakses pada 10 Juli 2021, Pukul 09.05 WITA, p. 1.

⁴⁹As declared by the Constitutional Court Decision Number 91/PUU-XVIII/2020, the Law on Job Creation was considers unfulfilling procedural prerequisites to drafting law, and recognized as conditionally unconstitutional within maximum two years should be rearranged by the Parliament and Government, respectively. See in further: Hermanto, B. & Aryani, N.M. (2022). Omnibus Legislation as the Tool for Legislative Reform by Developing Countries, *Theory and Practice of Legislation*, in-press, 1-26, DOI: <https://doi.org/10.1080/20508840.2022.2027162>, pp. 11-12.

⁵⁰Nalle, V.I.W. (2016). Kedudukan Peraturan Kebijakan dalam Undang-Undang Administrasi Pemerintahan, *Jurnal Refleksi Hukum*, 10(1), 1-16, DOI: 10.24246/jrh.2016.v10.i1.p1-16, pp. 5, 8-9.

⁵¹Prasetyo, T. (2014) Membangun Hukum Nasional berdasarkan Pancasila, *Jurnal Hukum & Peradilan*, 3(3), 213-222, DOI: <http://dx.doi.org/10.25216/JHP.3.3.2014.213-222>, pp. 217-218.

⁵²Suartha, I.D.M., Martha, I.D.A.G.M., & Hermanto, B. (2021). Innovation based on Balinese local genius shifting alternative legal concept: towards Indonesia development acceleration. *Journal of Legal, Ethical and Regulatory Issues*, 24(7), 1-9, pp. 6-7.

⁵³Hamzani, A.I. & Mukhidin, M. (2015) National Law Development as Implementaion of Pancasila Law Ideals and Social Change Demands, *Jurnal Dinamika Hukum*, 18(2), 131-138, DOI: <http://dx.doi.org/10.20884/1.jdh.2018.18.2.898>, p. 136.

norms arrangements of this issue,⁵⁴ especially in the Article 42 to Article 49 Law on Employment 2003 that amended in the Law on Job Creation.

First, the Article 42 of the Law on Employment 2003 amendment as stipulates in the Article 81 number (4) Law on Job Creation, philosophically, it is arranged with aims to create legal certainty to Employer who employing foreign workers in the context of accelerate ease of doing business, ease of permit to use foreign workers, including for any Risk Based Activity Cluster (Sector Permits).

Second, the rearrangement of the Article 42 Law on Employment 2003 in broader context by the Article 81 number (4) Law on Job Creation is based on the previous regulation (Presidential Regulation Number 20 of 2018), for example, the Article 7 paragraph (1) regulating the Employer who employing foreign workers should have approved and valid Plan/RPTKA, Article 17 paragraph (1) that revoke the Permit for the Use of Foreign Workers (*IMTA*), every foreign workers should have Temporary Permit (*VITAS*), and the Employer should have the Plan (*RPTKA*), with exception for shareholders, diplomatic and consular officers, and special job fields that needed by Government. In this Law, there is amendment to the delegating norms for further arrangement of the use of foreign workers, from Presidential Regulation became Government Regulation, and the affirmation for positive contribution to boost investment growth, and create new job fields for Indonesia workers.⁵⁵

Third, the recognition towards Employer obligation as regulates in the Article 45 Law on Employment 2003 after amended in the Article 81 number (7) Law on Job Creation, interestingly, this provision was changing from previous version until enacted version, especially debate that raises with arrangement administrative sanctions for any violations conducted by Employer as regulates in the Article 6 paragraph (1)-(3), Article 7 paragraph (1)-(2), Article 8 paragraph (1)-(2), Article 9, Article 10, and Article 11 paragraph (1)-(2) Government Regulation Number 34 of 2021. It is also strengthened with Chapter VII concerning Administrative Sanctions and Article 19 paragraph (6), Article 23 paragraph (1), Article 32 paragraph (1)-(3) Government Regulation Number 34 of 2021, with penalty form; temporary suspension from approval application process; and revoking the Approval of the Use of Foreign Workers Plan (Article 36 paragraph (1)-(3); Article 37 paragraph (1)-(5); Article 38 paragraph (1)-(4); Article 39 paragraph (1)-(4); Article 40 and Article 41).

Fourth, related with further arrangement as derivation of the Law on Job Creation, in the previous bill,⁵⁶ the government still defending the use Presidential Regulation, in this context, the Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers. According to statutory law theories, the use of Presidential Regulation raise legal problem. The Presidential Regulation has "rule" character to shaping "regelung" with *dauerhaftig* character, and according to the Article 4 Paragraph

⁵⁴Kementerian Koordinator Perekonomian, (2020) "[Dokumen] - RUU Cipta Kerja", 14 Februari 2020, URL: <https://ekon.go.id/info-sektoral/15/6/dokumen-ruu-cipta-kerja>, diakses pada 10 Juli 2021, Pukul 09.41 WITA, p. 1.

⁵⁵Kementerian Koordinator Perekonomian, (2020) *Naskah Akademik RUU Cipta Kerja*, Bagian Lampiran angka (3) Ketenagakerjaan 3.1. Tenaga Kerja Asing, h. 1191-1197.

⁵⁶Dewan Perwakilan Rakyat, 2020, *Risalah RDPU dengan PSHK dan PUSAKO Univ. Andalas dalam Rangka Penyusunan Prolegnas Tahun 2020-2024 dan Prolegnas Prioritas Tahun 2020 berkaitan dengan Omnibus Law*, Tahun Sidang 2018-2019 Masa Persidangan I, pada Senin, 4 November 2019, h. 1-38.

(1) the 1945 Indonesia Constitution, this form is related with Presidential authorities within governance context. Hence, the Presidential Regulation has legal substance to implement delegating norm from higher statutory law or conducting government activities in the Presidential domain, as practiced with Presidential Decree in other countries, like US and others.⁵⁷ The Presidential Regulation was created both in the context *concentration of power and responsibility upon the President* or *delegated legislation* according to the higher statutory laws including the 1945 Indonesia Constitution, Laws, or Government Regulation.

Based on theoretical framework as explained earlier, the Article 49 Law on Employment 2003 as amended by the Article 81 number Law on Job Creation that regulates further arrangement or delegated regulation with Government Regulation Number 34 of 2021 that enter into force in April, 1st, 2021 (Article 48), and revoking Presidential Regulation Number 20 of 2018 (Article 46). Theoretically, this arrangement with Government Regulation form was justified because it cannot be separated with the Article 5 paragraph (2) the 1945 Indonesia Constitution that the President could enact Government Regulation as derivation of the Laws or conducting government activities. It is also related with basic substances of Government Regulation, including **first**, the Government Regulation cannot be enacted before the primary arrangement in the Law forms was enter into force; **second**, the Government Regulation cannot regulates criminal sanctions if the Law does not regulates this sanctions; **third**, the Government Regulation cannot amended or revoking any provisions that stipulates in the Law; **fourth**, the Government Regulation can be arranged to regulates government activities while there is none Law clearly delegates it; and **fifth**, the Government Regulation substances including *regeling* or combination of *regeling* and *beschikking*.

In fact, the use of foreign workers arrangement in the Law on Employment 2003 that amended by the Law on Job Creation, in the one hand, follows rapid globalization in recent decades that shift any countries to integrate global market and increasing global leadership role. It is also similarly with any other Southeastern Asia countries, besides Indonesia, these countries also facing the needs to increase economic strategy with light export industrialization, shift strategic role of workers number with low salaries, increasing investment,⁵⁸ while any global obstacles to boost domestic market, none countries could prevent rapid flows of foreign workers as residual effects from these condition.⁵⁹ The ease of foreign workers to gain broader opportunity in Indonesia raise serious problem for Indonesia workers, and it seems losing justice for local workers with pragmatism attempts by Government under business-friendly-flexible orientation.⁶⁰

⁵⁷Zingales, L. (2015). Presidential Address: Does Finance Benefit Society?, *The Journal of Finance*, 70(4), 1327-1363, DOI: <https://doi.org/10.1111/jofi.12295>, pp. 1347-1349.

⁵⁸Elias, J. (2013). Foreign policy and the domestic worker: the Malaysia-Indonesia domestic worker dispute, *International Feminist Journal of Politics*, 15(3), 391-410, DOI: <https://doi.org/10.1080/14616742.2012.755835>, pp. 399-404.

⁵⁹Beers, S. (2013). Thinking Globally, Framing Locally: International Discourses and Labor Organizing in Indonesia, *ASEAS (Aktuelle Südostasienforschung) - Austrian Journal of South-East Asian Studies*, 6(1), 120-139, DOI: <https://doi.org/10.14764/10.ASEAS-6.1-7>, pp. 122-123, 126-127.

⁶⁰Chang, A.S. (2018). Producing the Self-Regulating Subject: Liberal Protection in Indonesia's Migration Infrastructure, *Pacific Affairs*, 91(4), 695-716, DOI: 10.5509/2018914695, pp. 698-699, 703-706.

Law on Job Creation just normatively calling for Indonesian workers protection, however, it is not reflect any essence to implement Government attempts to protect local workers, with more liberally to diminish market obstacles, open new foreign workers flows, while in partial context, any minimum attempts to equipping local workers was realized, and in philosophical context, the purpose to boost transfer of technology and knowledge and gain effective national rapid development just not more than legalistic perspective from Government and Parliament after Law on Job Creation enactment.

There is need in future to create new Manpower legal framework that strictly protect Indonesia worker rights, while the opportunity for foreign workers still be defended, the broader job fields for Indonesian should be fulfilled both in regulations and business treatment. In further, the implementation of Law on Job Creation should be prevented from unequal condition between local workers and foreign workers, the rapid flows of investment should be respecting local workers, especially for broader opportunity for transfer of knowledge/skills/knowledge, permitted job fields or exception job fields for foreign workers, and implementation of education and training for Indonesia workers to increase their competences according to the work field needs.

4. Conclusion

Based on the abovementioned, it can be concluded that the dynamics legal policy regarding the use of foreign workers should be understood with arrangement context of statutory laws products. There is reframing and rearrangement with enactment Law on Employment 2003, Presidential Regulation Number 20 of 2018, Minister of Manpower Regulation Number 10 of 2018, that became controversial and debatable regulations cause any provisions was contrary with the Law on Employment 2003. The recent problem also raises caused by the enactment the Law on Job Creation 2020 that revised and revoked any provisions of the Law on Employment 2003, and Government Regulation Number 34 of 2021 enactment also became more radical arrangement to ease foreign workers access to the Indonesia job fields. Furthermore, Law on Job Creation that amending Article 42 until Article 49 Law on Employment 2003 into Article 81 number (4) Law on Job Creation, that revoking any provisions of the Article 43, Article 44, Article 46, and Article 48 Law on Employment 2003 by the Article 81 number (5), Article 81 number (6), Article 81 number (8), and Article 81 number (10) Law on Job Creation. This rearrangement was created to implement legal certainty for Employer in the context to boost ease doing business, ease of permit to use foreign workers including Risk-based Business Activity cluster (Sector Permit), and lead positive contribution in accelerating investment growth, including create new and expanded job fields and opportunities for Indonesia workers

References

Books

- Anggono, B.D., Fahmi, K., Madril, O., and Usfunan J.Z. (2021). *BPJS Ketenagakerjaan: Aspek Politik Hukum, Kelembagaan, dan Kepesertaan*, First Edition, Jakarta: RajaGrafindo Persada.
- Dunn, W.N. (2008). *Public Policy Analysis An Introduction*, Fourth Edition, Pearson Education Princeton Hall Inc., Upper Saddle River, New Jersey.

- Hamidi, J. & Christian, C. (2016). *Hukum Keimigrasian bagi Orang Asing di Indonesia*, Cetakan Pertama, Sinar Grafika, Jakarta.
- Pierson, C. (1998). *Beyond a Welfare State? The New Political Economy of Welfare*, Second Edition, T.J. International and Pennsylvania State University Press University Park, Padstow-Pennsylvania.
- Setiyono, B. (2018). *Model & Desain Negara Kesejahteraan*, Cetakan Pertama, Nuansa Cendekia, Bandung.
- Supramono, G. (2019). *Hukum Orang Asing di Indonesia*, Sinar Grafika, Jakarta.

Non-Journal and Journal Publications

- Athey, S., & Imbens, G.W. (2017). The state of applied econometrics: Causality and policy evaluation, *Journal of Economic Perspectives*, 31(2), 3-32, DOI: 10.1257/jep.31.2.3.
- Attamimi, A.H.S. (1990). Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara (Suatu Studi Analisis Mengenai Keputusan Presiden yang Bersifat Pengaturan dalam Kurun Waktu Pelita I – Pelita IV), *Disertasi Doktor*, Jakarta: Fakultas Pascasarjana Universitas Indonesia.
- Azhari, A.F (2012). Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi, *Jurnal Hukum Ius Quia Iustum*, 19(4), 489-505, DOI: <https://doi.org/10.20885/iustum.vol19.iss4.art1>.
- Beers, S. (2013). Thinking Globally, Framing Locally: International Discourses and Labor Organizing in Indonesia, *ASEAS (Aktuelle Südostasienforschung) - Austrian Journal of South-East Asian Studies*, 6(1), 120-139, DOI: <https://doi.org/10.14764/10.ASEAS-6.1-7>.
- Bohlander, M. (2011). Radbruch redux: the need for revisiting the conversation between common and civil law at root level at the example of international criminal justice, *Leiden Journal of International Law*, 24(2), 393-410, DOI: <https://doi.org/10.1017/S0922156511000070>.
- Caraway, T.L. (2009). Labor Rights in East Asia: Progress or Regress?, *Journal of East Asian Studies*, 9(2), 153-186, DOI: <https://doi.org/10.1017/S1598240800002976>.
- Chang, A.S. (2018). Producing the Self-Regulating Subject: Liberal Protection in Indonesia's Migration Infrastructure, *Pacific Affairs*, 91(4), 695-716, DOI: 10.5509/2018914695.
- Choudhury, N. (2017). Revisiting Critical Legal Pluralism: Normative Contestations in the Afghan Courtroom. *Asian Journal of Law and Society*, 4(1), 229-255, DOI: 10.1017/als.2017.2.
- Dewan Perwakilan Rakyat Republik Indonesia, 2020, *Risalah RDPU dengan PSHK dan PUSAKO Univ. Andalas dalam Rangka Penyusunan Prolegnas Tahun 2020-2024 dan Prolegnas Prioritas Tahun 2020 berkaitan dengan Omnibus Law*, Tahun Sidang 2018-2019 Masa Persidangan I, pada Senin, 4 November 2019.

- Djazuli, R.F. (2021). Dinamika Pengaturan Tenaga Kerja Asing di Indonesia, *Jurnal Hukum dan Kemanusiaan*, 15(1).
- Djulius, H. (2017). Foreign direct investment and technology transfer: Knowledge spillover in the manufacturing sector in Indonesia, *Global Business Review*, 18(1), 57-70, DOI: <https://doi.org/10.1177/0972150916666878>.
- Elias, J. (2013). Foreign policy and the domestic worker: the Malaysia-Indonesia domestic worker dispute, *International Feminist Journal of Politics*, 15(3), 391-410, DOI: <https://doi.org/10.1080/14616742.2012.755835>.
- Faried, F.I.S. & Suparwi (2019). Evaluasi Implementasi Kebijakan Publik terhadap Peraturan Daerah Bermasalah", *Jurnal Supremasi*, 9(2), 28-38, DOI: <https://doi.org/10.35457/supremasi.v9i2.716>.
- Goh, C., Wee, K., & Yeoh, B.S.A. (2017). Migration governance and the migration industry in Asia: moving domestic workers from Indonesia to Singapore, *International Relations of the Asia-Pacific*, 17(3), 401-433, DOI: <https://doi.org/10.1093/irap/lcx010>.
- Hadiprayitno, I.I. (2010). Defensive Enforcement: Human Rights in Indonesia, *Human Rights Review*, 11(3), 373-399, DOI: 10.1007/s12142-009-0143-1.
- Hamzani, A.I. & Mukhidin, M. (2015). National Law Development as Implementaion of Pancasila Law Ideals and Social Change Demands, *Jurnal Dinamika Hukum*, 18(2), 131-138, DOI: <http://dx.doi.org/10.20884/1.jdh.2018.18.2.898>.
- Hermanto, B. & Aryani, N.M. (2018). Gagasan Pengaturan yang Ideal Penyelesaian Yudisial maupun Ekstrayudisial Pelanggaran Hak Asasi Manusia di Indonesia, *Jurnal Legislasi Indonesia*, 15(4), 369-383.
- Hermanto, B. & Aryani, N.M. (2022). Omnibus Legislation as the Tool for Legislative Reform by Developing Countries, *Theory and Practice of Legislation*, in-press, 1-26, DOI: <https://doi.org/10.1080/20508840.2022.2027162>.
- Hosen, N. (2007). Human Rights Provisions in the Second Amendment to the Indonesian Constitution from *Shari'ah* Perspective, *The Muslim World*, 97(2), 200-224.
- Jazuli, A. (2018). Eksistensi tenaga kerja asing di Indonesia dalam perspektif hukum keimigrasian. *Jurnal Ilmiah Kebijakan Hukum*, 12(1), 89-105. DOI: <http://dx.doi.org/10.30641/kebijakan.2018.V12.89-105>.
- Jensen, C., Wenzelburger, G. & Zohlnhöfer, R. (2019). Dismantling the Welfare State? After Twenty-five years: What have we learned and what should we learn?, *Journal of European Social Policy*, Volume 29, Issue 5, 681-691, DOI: <https://doi.org/10.1177/0958928719877363>.
- Kementerian Koordinator Perekonomian, 2020, *Naskah Akademik Rancangan Undang-undang Cipta Kerja*, Kementerian Perekonomian Republik Indonesia, Jakarta.

- Laksono, P. (2018). Pengawasan Perizinan Tenaga Kerja Asing, *Supremasi Hukum: Jurnal Penelitian Hukum*, 27(1), 74-91, DOI: <https://doi.org/10.33369/jsh.27.1.74-91>.
- Li, T.M. (2017), The Price of Un/Freedom: Indonesia's Colonial and Contemporary Plantation Labor Regimes, *Comparative Studies in Society and History*, 59(2), 245-276, DOI: 10.1017/S0010417517000044.
- Mawar, S. (2020). Metode Penemuan Hukum (Interpretasi dan Konstruksi) dalam Rangka Harmonisasi Hukum, *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial*, 1(1), 22-38, DOI: <http://dx.doi.org/10.22373/justisia.v1i1.2558>.
- Nalle, V.I.W. (2016). Kedudukan Peraturan Kebijakan dalam Undang-Undang Administrasi Pemerintahan, *Jurnal Refleksi Hukum*, 10(1), 1-16, DOI: 10.24246/jrh.2016.v10.i1.p1-16.
- Nurhidayati, N. (2019). Perizinan Tenaga Kerja Asing, Kebijakan dan Implementasinya, *Widya Cipta: Jurnal Sekretari dan Manajemen*, 3(2), 241-248, DOI: <https://doi.org/10.31294/widyacipta.v3i2.6444.g3557>.
- Permatasari, I.A. (2020). Kebijakan Publik (Teori, Analisis, Implementasi dan Evaluasi Kebijakan)." *The Journalish: Social and Government*, 1(1), 33-37.
- Petroski, K. (2013). Legal Fictions and the Limits of Legal Language. *International Journal of Law in Context*, 9(4), 485-505. DOI: 10.1017/S1744552313000268.
- Pottag, A.T. (2018). Politik Hukum Pengendalian Tenaga Kerja Asing yang Bekerja di Indonesia, *Media Iuris*, 1(2), 236-250, DOI: <http://dx.doi.org/10.20473/mi.v1i2.8827>.
- Prasetyo, T. (2014). Membangun Hukum Nasional berdasarkan Pancasila, *Jurnal Hukum & Peradilan*, 3(3), 213-222, DOI: <http://dx.doi.org/10.25216/JHP.3.3.2014.213-222>.
- Santoso, B. (2018). The Obstacles of Labor Inspection in Protecting Workers' Rights in Indonesia, *Journal of Advanced Research in Law and Economics*, IX(5(35)), 1765 - 1770. DOI: 10.14505/jarle.v9.5(35).31.
- Schmiedeberg, C. (2010). Evaluation of cluster policy: a methodological overview, *Evaluation*, 16(4), 389-412, DOI: <https://doi.org/10.1177/1356389010381184>.
- Setiyono, B. & Chalmers, I. (2018). Labour Protection Policy in a Third World Economy: the Case of Indonesia, *Development and Society*, 47(1), 139-158, DOI: 10.21588/dns/2018.47.1.006.
- Spaak, T. (2009). Meta-ethics and legal theory: The case of Gustav Radbruch, *Law and Philosophy*, 28(3), 261-290, DOI: 10.1007/s10982-008-9036-8.
- Suartha, I.D.M., Puspitosari, H., & Hermanto, B. (2020). Reconstruction Communal Rights Registration in Encouraging Indonesia Environmental Protection, *International Journal of Advanced Science and Technology*, 29(3s), 1277-1293.

- Suartha, I.D.M., Martha, I.D.A.G.M., & Hermanto, B. (2021). Innovation based on Balinese local genius shifting alternative legal concept: towards Indonesia development acceleration. *Journal of Legal, Ethical and Regulatory Issues*, 24(7).
- Sudharma, K.J.A., Artami, I.A.K. & Rachella, B. (2021). Tinjauan Yuridis Perlindungan Hukum Hak Cuti Haid dalam Undang-undang No. 13 Tahun 2003 tentang Ketenagakerjaan, *Vyavahara Duta: Jurnal Ilmiah Ilmu Agama dan Ilmu Hukum*, 16(1), 1-13, DOI: <http://dx.doi.org/10.25078/vd.v16i1.2068>.
- Sururi, A. (2016). Inovasi Kebijakan Publik (Tinjauan Konseptual dan Empiris), *Sawala: Jurnal Administrasi Negara*, 4(3), 1-14, DOI: <https://doi.org/10.30656/sawala.v4i3.241>.
- Syafi'ie, M.. (2012). Instrumentasi Hukum HAM, Pembentukan Lembaga Perlindungan HAM di Indonesia dan Peran Mahkamah Konstitusi, *Jurnal Konstitusi*, 9(4), 681-712, DOI: 10.31078/jk%k.
- Warnecke, T. & de Ruyter, A. (2012). The Enforcement of Decent Work in India and Indonesia: Developing Sustainable Institutions, *Journal of Economic Issues*, XLVI(2) 393-401, DOI: 10.2753/JEI0021-3624460214.
- Wibisana, A.G. (2019). Menulis di Jurnal Hukum: Gagasan, Struktur, dan Gaya, *Jurnal Hukum & Pembangunan*, 49(2), 471-496.
- Widiatedja, I.G.N.P. (2021). Fragmented Approach to Spatial Management in Indonesia: When it Will Be Ended?, *Kertha Patrika*, 43(2), 145-166, DOI: <https://doi.org/10.24843/KP.2021.v43.i02.p03>.
- Widiatedja, I.G.N.P. and Suyatna, I.N. (2022). Job Creation Law and Foreign Direct Investment in Tourism in Indonesia: Is It Better than Before?, *Udayana Journal of Law and Culture*, 6(1), 62-82, DOI: <https://doi.org/10.24843/UJLC.2022.v06.i01.p04>.
- Yusa, I.G., Hermanto, B. & Aryani, N.M. (2020). No-Spouse Employment and the Problem of the Constitutional Court of Indonesia, *Journal of Advanced Research in Law and Economics*, 11(1(47)), 214-226, DOI: [https://doi.org/10.14505/jarle.v11.1\(47\).26](https://doi.org/10.14505/jarle.v11.1(47).26).
- Yusa, I.G., Hermanto, B., and Ardani, N.K. (2021). Law Reform as the Part of National Resilience: Discovering Hindu and Pancasila Values in Indonesia's Legal Development Plan, *International Proceedings of the International Conference for Democracy and National Resilience (ICDNR 2021): Advanced in Social Science, Education, and Humanities Research*, 620(1), 1-10, DOI: <https://doi.org/10.2991/assehr.k.211221.001>.
- Zingales, L. (2015). Presidential Address: Does Finance Benefit Society?, *The Journal of Finance*, 70(4), 1327-1363, DOI: <https://doi.org/10.1111/jofi.12295>.

Statutory Laws and Regulations

Indonesia, the 1945 Indonesia Constitution.

_____, Law Number 13 of 2003 concerning Manpower.

- _____, Law Number 11 of 2020 concerning Job Creation.
- _____, Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers.
- _____, Presidential Regulations Number 20 of 2018 concerning the Use of Foreign Workers.
- _____, Minister of Labor Regulation Number 10 of 2018 concerning the Use of Foreign Workers Procedures.

Internet Sources

- Asmara, C.G. (2021) "Terungkap, Ini Jumlah Tenaga Kerja Asing yang Bekerja di RI", URL: <https://www.cnbcindonesia.com/news/20210525130123-4-248217/terungkap-ini-jumlah-tenaga-kerja-asing-yang-bekerja-di-ri>, diakses tanggal 20 Juni 2021, Pukul 09.46 WITA.
- Gus (CNBC Indonesia) (2019) "Tenaga Kerja Asing di RI Meroket 38% Terbanyak dari China", URL: <https://www.cnbcindonesia.com/news/20190908075511-4-97843/tenaga-kerja-asing-di-ri-meroket-38-terbanyak-dari-china>, diakses tanggal 1 Desember 2019, Pukul 09.57 WITA.
- Kementerian Koordinator Perekonomian (2020). "[Dokumen] - RUU Cipta Kerja", 14 Februari 2020, URL: <https://ekon.go.id/info-sektoral/15/6/dokumen-ruu-cipta-kerja>, diakses pada 10 Juli 2021, Pukul 09.41 WITA.
- Laoli, N. (2021) "Jumlah Tenaga Kerja Asing di Indonesia 98.902 TKA China Terbesar", URL: <https://nasional.kontan.co.id/news/jumlah-tenaga-kerja-asing-di-indonesia-98902-tka-china-terbesar-berikut-datanya>, diakses tanggal 20 Juni 2021, Pukul 09.51 WITA.
- Maharani, T. dan Rastika, I. (2020) "PSHK: Proses Pembentukan UU Cipta Kerja Abaikan Ruang Demokrasi", 6 Oktober 2020, URL: <https://nasional.kompas.com/read/2020/10/06/12450231/pshk-proses-pembentukan-uu-cipta-kerja-abaikan-ruang-demokrasi?page=all>, diakses pada 10 Juli 2021, Pukul 09.05 WITA.
- Pusat Studi Hukum dan Kebijakan Indonesia (2020). "Pengesahan UU Cipta Kerja: Legislasi Tanpa Ruang Demokrasi", 6 Oktober, URL: <https://pshk.or.id/publikasi/pengesahan-uu-cipta-kerja-legislasi-tanpa-ruang-demokrasi/>, diakses pada 10 Juli 2021, Pukul 08.49 WITA.
- Saubani, A. (2020) "UU Cipta Kerja Mengulang Catatan Buruk Proses Legislasi", 6 Oktober, URL: <https://www.republika.co.id/berita/qhrsw409/uu-cipta-kerja-mengulang-catatan-buruk-proses-legislasi>, diakses pada 10 Juli 2021, Pukul 08.55 WITA.