

LEGAL RECONSTRUCTION OF FAIR FOREIGN WORKFORCE REGULATIONS BASED ON NATIONAL LEGAL REASONS

LALU HADI ADHA ^{1*}, L. HUSNI ², ANY SURYANI ³ and DJUMARDIN ⁴

^{1,2,3,4} Doctoral Study Program in Legal Studies, Faculty of Law, Mataram University, Indonesia.

*Corresponding Author

Abstract

This research aims to discover and analyze changes in legal construction regarding the regulation of foreign workers (TKA) which have values of justice based on the ideals of national law as stated in the values of Pancasila and the 1945 Constitution. The writing of this research will be carried out by referring to Normative legal research methods or methods, namely the type of research commonly carried out in the development of legal science which is generally also called Legal Dogmatics Research. The legal materials used in this research are secondary data in the form of literature books discussing Employment Law, plus legal materials in the form of scientific works by experts, journals and papers related to this research. As a legal dogmatic research, normative legal materials are processed in stages: structuring, describing and systematizing legal materials which consist of three levels, namely the technical level, teleological level and external systematization level. The research results show that The legal reconstruction of fair TKA regulations established by the legislature must be based on an understanding of legal science, but not limited to a study of understanding political science, so that the law that is formed is law in the sense of legal discovery as a crystallization, concretization of legal regulations that should be (*das sollen*), which refers to on legal theories and legal principles. Law must emerge with its transcendental and metaphysical nature so that the antecedents of morality must take precedence, but it does not give rise to law as a political force that is legitimized by its coercive nature and gives the impression of being forced. If it is connected to the goals of society, which we then return more broadly to the goals of the state, namely advancing general welfare, protecting all Indonesian people, then the convenience and support given by the state to foreign workers through Law No. 11 of 2020 which was amended by Perpu No. 2 2022 in conjunction with Law No. 6 of 2023 concerning the Determination of Perpu No. 2 of 2022 into Law and PP No. 34 of 2021 cannot be said to be in line with state objectives. Therefore, it is important to reconstruct the regulation of the use of foreign workers in the form of regulations and laws that are clear and can be monitored so that they can provide fair legal certainty in accordance with Pancasila and the 1945 Constitution as national legal ideals for foreign workers and at the same time protect the interests and interests of foreign workers. domestic labor rights.

Keywords: Legal Reconstruction, Foreign Workers, National Legal Dreams

INTRODUCTION

Employment development as an integral part of national development based on Pancasila and the 1945 Constitution, is carried out in the framework of the complete development of Indonesian people and the development of Indonesian society as a whole to increase the honor, dignity and self-esteem of the workforce. And realizing a prosperous, just, prosperous and equitable society, both materially and spiritually. Advances in science and technology, developments in the times, and market opportunities at home and abroad require improvements in the quality of Indonesia's human resources in general as well as the role and position of the workforce in implementing national development in particular, both as development actors and as development goals.

As a development actor, labor plays a role in increasing national productivity and community welfare. Therefore, the workforce must be empowered so that it has added value in the sense of being more capable, more skilled and better qualified, so that it can be optimally useful in national development and able to compete in the global era. The capabilities, skills and expertise of the workforce need to continue to be improved through employment planning and programs including training, internships and workforce placement services including the appropriate use of foreign workers (TKA) in accordance with the required competencies in order to utilize the transfer of knowledge and technology. which it has as an effort to develop and improve the quality of Indonesia's workforce.

The theoretical problem of using foreign workers in Indonesia cannot be separated from the increasingly massive development of globalization occurring today, thus encouraging the movement of capital and investment flows to various corners of the world, population migration or labor movement between countries. This labor movement takes place because investments made in other countries generally require direct supervision by the owner/investor. As a consequence of globalization, there is also liberalization of trade and investment, such as direct foreign investment, so the number of foreign workers (TKA) working in Indonesia tends to increase from time to time. Moreover, Indonesia as part of the world community such as the WTO, AFTA, APEC and MEA is increasingly increasing the opportunities for foreign workers to enter Indonesia.

In the World Trade Organization, one of which discusses trade in the services sector (General Agreements on Trade in Services), it is mandatory for each member country to open market access for foreign workers (TKA) who provide foreign services. Indonesia, which has participated in the WTO and has ratified it, of course must follow the obligations mandated in the agreement. The quality aspect of human resources must be the central point. Likewise, diplomatic relations between ASEAN countries are taking place in the economic sector through the ASEAN Economic Community (AEC).¹ and the formation of a free trade agreement between ASEAN member countries and China in the ASEAN-China Free Trade Area seems to confirm that the influence of globalization on a country's economic development is inevitable. Especially in the Indonesian context, free economic trade relations as above also provide competitive and creative economic work activities between human beings, including in the employment aspect as one of the foundations for realizing sustainable economic development. The trend of increasing free trade agreements between regions or between countries is increasing as a result of globalization, thus causing high people's mobility because there are no longer any borders between countries in terms of human or labor movement.

In connection with the mobility of skilled labor in ASEAN which is an important aspect in the liberalization of the ASEAN services sector, pessimism arises in facing the challenges of implementing trade liberalization between these countries, such as Chia Siow Yue, for example, stated that "almost all countries (ASEAN members) moving away from policies, regulations and practices aimed at protecting domestic skilled and professional workers from competition with foreign workers."² Chia Siow Yue also said that one of the most important mechanisms for the success of the liberalization of the ASEAN services sector, namely the Mutual

Recognition Arrangement (MRA) agreements, also had many problems. The negotiations took a long time and were complicated due to differences in levels of development among ASEAN countries. Not only are the negotiations complicated and time consuming, he also said that implementation is also often hampered. Moreover, he stated that MRA negotiations cannot automatically mean open market access and effective intra-ASEAN mobility. This condition is caused by domestic business regulations and practices that hinder this mobility, including legal rules contained in laws and other regulations (such as restrictions on foreign workers in certain sectors, visa requirements and procedures, the need to prove that a company needs workers), foreign workers (TKA), and so on).³

At the same time as the influence of global life continues to increase, on the one hand it will encourage demands for stronger community empowerment, on the other hand it will also encourage dynamics in various fields towards greater independence. The relationship between globalism versus nationalism on the one hand and between centralism versus localism and regionalism on the other hand will continue to increase in the future. Therefore, the legal instruments that are developed should be able to bridge the relationships between these interests so that the law can play an active role in encouraging progress, but at the same time maintaining and controlling developments that occur in a balanced manner within the framework of the national legal system based on Pancasila and the 1945 Constitution. Therefore, efforts to create a national legal system need to continue to be strengthened in a coordinated, directed and integrated manner, supported by comprehensive, systematic and sustainable legal material development planning.⁴

Nowadays, the world's workforce is leaving their countries in droves for work missions in other countries that offer higher wages. Laborers/workers who have high sales value will certainly have quite a big opportunity to achieve higher wages. Globalization not only causes rapid circulation of investment and information, it also concerns labor issues. The rapid flow of labor migration is basically the result of three different conditions in each of developed countries, newly industrialized countries and poor and developing countries. The success of economic development in developed countries has pushed wage levels and working conditions to an even better level. In newly industrialized countries, the acceleration of economic development means that the demand for skilled labor must be imported from developed countries, while jobs that are more concerned with muscle come from poor and developing countries.⁵ The presence of foreign workers is not only due to shipments from the country of origin but also because there is demand from the destination country because demand will always be present if there is supply, and vice versa. In poor and developing countries, it is the difficulty of finding work and low wages that encourage labor migration.

The phenomenon of using foreign workers is actually a normal thing as long as it can make a positive contribution to the development and increase the progress of Indonesian workers and companies nationally while still providing priority opportunities for national workers. Therefore, the foreign workers needed certainly have the expertise and skills that companies need as employers so that they are expected to have an impact on increasing the quality of human resources due to the transfer of knowledge and technology transfer that can be mastered

by the national workforce. It's just that problems will arise when the foreign workers who come are foreign workers who don't have the skills to be employed in companies where this type of work can actually still be done by local or local residents. Based on data from the Ministry of Manpower, there were 93,761 foreign workers working in Indonesia throughout 2020. This number decreased by 14.4% from the highest number of 109,546 foreign workers in 2019. As of May 2021, the number of foreign workers entering Indonesia was 92,058 people. Judging from the type of business, 50,688 TKA were employed in the service sector, 39,153 TKA in the industrial sector, and 2,217 TKA in the agricultural and maritime sectors.⁶ Furthermore, from the same source, it was recorded that in June 2020 there were 90,036 foreign workers (TKA) who were still residing and working in Indonesia. This number has decreased by 16.46 percent compared to the presence of foreign workers in January 2020 of 107,771 people. Looking at the type of business, it is known that foreign workers working in Indonesia mostly work in the service sector. In June 2020, there were 52,482 foreign workers working in the service sector or around 58.29 percent, while in the industrial sector there were 35,098 people or around 38.98 percent, and in the agricultural and maritime sectors there were 2,456 people or around 2.73 percent.⁷

However, the official data released by the Ministry of Manpower is in contrast to the statement made by Faisal Basri⁸ in an interview with online media detikfinance, who stated that there were thousands of foreign workers from China entering Indonesia via Sam Ratulangi airport, some of them came officially with working status, but some came with visiting status. Most of the foreign workers are unskilled workers employed in types of work that do not require special skills at mining companies in Sulawesi. In fact, further according to Faisal Basri, Chinese investment in Indonesia is not much, Chinese investment is only number 22, as recipients of Chinese foreign investment throughout the world, even though it rose from 44th or 46th to 22nd, so we are behind Malaysia, Singapore, Thailand. to attract investment from China.⁹

Then with the publication of Law No. 13 of 2003 concerning Manpower, this law became a specialist lex for regulating the Use of Foreign Workers (TKA) contained in Chapter VIII, Articles 42 to Article 49. These regulations start from the obligations of employers who use TKA to obtain written permission; have a plan for the use of TKA which includes the reasons, type of position and period of use of TKA; obligation to appoint Indonesian citizens as TKA companions; to the obligation to return foreign workers to their country of origin after the end of their employment relationship. The provisions in this law emphasize that every entrepreneur is prohibited from employing foreigners without written permission from the Minister. The definition of foreign worker is also narrowed, namely foreign nationals holding visas with the intention of working in Indonesian territory.¹⁰ In this provision it is reaffirmed that every employer who employs foreign workers is required to have written permission from the Minister or appointed official. To provide wider employment opportunities for Indonesian workers (TKI), the government limits the use of foreign workers and carries out supervision. In this context, the Government has issued a number of legal instruments ranging from licensing, health protection guarantees to supervision.

However, it did not stop until the issuance of Law No. 13 of 2003 with its implementing regulations, the regulations regarding Foreign Workers (TKA) continued to undergo changes along with changes in government regimes in each period. However, the current government¹¹ make changes to labor regulations with different techniques from previous governments. The government together with the legislature made changes using the Omnibuslaw technique.¹² This omnibus law is included in the 2020 priority national legislation program (prolegnas). A number of groups have criticized the formation of this omnibus law for various reasons and arguments. However, quite a few people also support the formation of this omnibus law on the grounds that this omnibus law is one of the regulatory reform strategies to overcome obesity/hyper-regulation conditions, especially in the ease of doing business sector. Investment, Land, Civil Society, Taxation and Employment. The employment cluster is one of the 11 clusters in the Job Creation Law which continues to receive public attention after the academic text and draft were submitted to the DPR leadership on February 12 2020. Previously, many groups criticized the substance of the Job Creation Bill, especially the Employment Cluster, especially among workers and labor unions because There have been many changes or deletions to a number of articles in Law No. 13 of 2003 concerning Employment. Therefore, the Omnibus Law on the Job Creation Bill is considered to be detrimental to workers and more profitable for investors/entrepreneurs. However, discussion of the Job Creation Bill continues in the DPR even though this bill has generated controversy in society, one of which is in the field of Employment.

As a follow-up to the Constitutional Court Decision Number 9I/PUUX\ IIII / 2020, the government did several things to follow up on the Constitutional Court's decision, including; firstly establishing Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations which has regulated and contained the omnibuslaw method in drafting laws and has clarified meaningful public participation in the formation of legislative regulations invitation. With Law Number 13 of 2022, the use of the omnibus method has fulfilled definite, standard and standard methods and methods in drafting statutory regulations. Secondly, approximately two years after the enactment of Law No. 11 of 2020, the government issued Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation on December 30 2022. The President issued this Perppu as a follow-up to the decision of the Constitutional Court (MK) which it is claimed by the government in order to provide and guarantee legal certainty for the sustainability of investment in the future, as well as to make improvements and replacements to Law Number 11 of 2020 concerning Job Creation, and finally to enact Perpu No. 2 of 2022 into law by issuing the Law No. 6 in 2023.

Therefore, juridical issues have arisen since Law No. 11 of 2020 and the issuance of Perpu No. 2 of 2022 concerning Job Creation until the enactment of this Perpu into Law No. 6 of 2023¹³ officially applies in Indonesia, especially those that regulate employment. A number of polemics have arisen regarding the juridical problems regarding the implementation of this law, many parties believe that the Job Creation Law is considered to only benefit corporations. One of the concerns regarding the presence of the Job Creation Law is the arrangements that make it easier for foreign workers to operate and work in Indonesia. Previously, the rules regarding

the use of foreign workers were regulated in Articles 42 to 49 of the Manpower Law. In the Job Creation Law, this rule was changed in Article 81 point 4 so that there are a number of changes that make the use of foreign workers in Indonesia easier.

Several changes to the regulations regarding foreign workers in question are first, permits are made easier. In the Manpower Law, foreign workers are required to have written permission from the relevant minister or official. This provision is in Article 42 Paragraph (1). A number of permits are regulated in Presidential Regulation Number 20 of 2018, including Limited Stay Visa (Vitas), Plans for Using TKA, and Permits to Use TKA. However, this provision was changed in the Job Creation Law, so that foreign workers only need to have a TKA Use Plan (RPTKA). The following are changes to Article 42 Paragraph (1): "Every employer who employs foreign workers is required to have a plan for the use of foreign workers that is approved by the Central Government." Second, make it easier for directors, commissioners and foreign shareholders. In the Manpower Law, written permission is made easier only for diplomatic and consular employees. This is stated in Article 42 Paragraph (3). However, in the Job Creation Law, this is expanded. Not only is there no need to obtain written permission, there are even a number of positions that do not need to have an RPTKA, such as directors, commissioners or shareholders.

Based on the Kompas Research and Development Poll¹⁴ found that 70 percent of respondents were worried that they would be negatively impacted by the issuance of Law Number 11 of 2020 concerning Job Creation. In detail, 54.4 percent said they were worried, and 15.5 percent were very worried. Meanwhile, 25.6 percent said they were not worried, and 1.9 percent said they were not very worried. "The poll found that almost 70 percent of respondents admitted that they were worried about the impact of this regulation. In fact, some of them admitted that they were very worried about it. Not only that, 18.1 percent of the public assessed that the regulation only benefits the government. Then, 16.6 percent assessed that legal products "It only benefits private workers or employees, 16.6 percent benefits investors/capital owners, 12.4 percent benefits workers, and 2.5 percent benefits farmers and fishermen. "Not many respondents felt that the Job Creation Perppu benefits workers. Only around 16.6 percent of respondents felt that the presence of a Perppu could provide worker protection and welfare. 60.5 Percent of the Public Assesses that the Job Creation Law Does Not Represent Community Aspirations. This assessment, which solely benefits business actors, the government and capital owners, is the reason for the greatest rejection of the Perppu. Based on the same survey, 48.2 percent of respondents rejected the regulations on the grounds that they did not side with employees and workers. Then, 18.9 percent refused because it made it easier for business actors or companies to lay off workers. Another 16.6 percent thought that the new legal product was used to pressure employees, 10.8 percent refused because they had experienced the impact of this regulation, and 5.5 percent refused because there was no maximum limit for contract employees. However, the research revealed that the public is not completely antipathetic to the presence of the Job Creation Law or Perppu. This can be seen from the attitude of more than half of the respondents who still have hope that legal products can bring public prosperity.

RESEARCH METHODS

Types of research

The writing of this research will be carried out by referring to Normative legal research methods or methods, namely the type of research commonly carried out in the development of legal science which is generally also called Legal Dogmatics Research.¹⁵ Peter M. Marzuki stated that Legal Research was carried out to solve the legal issues faced. Therefore, the ability to identify legal problems, carry out legal reasoning, analyze the problems faced and then provide solutions to these problems is needed.¹⁶ In Indonesia, this doctrinal method is already commonly referred to as a normative research method, to be contrasted with research methods that are called empirical research (which in international literature is called non-doctrinal research).¹⁷

The normative legal research method is carried out with the aim of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be according to the law.¹⁸ Therefore, knowing normative legal studies is important to carry out. The frame of reference used is the basic understanding of the legal system. The basic meanings are legal society, legal subjects, rights and obligations, legal events, legal relationships and legal objects.¹⁹

Research Approach Method

The statutory approach is research that prioritizes legal materials in the form of statutory regulations as basic reference material in conducting research. This approach is carried out by examining all statutory regulations related to the problem (legal issue) being faced. For example, this legislative approach is carried out by studying the consistency/compatibility between the Constitution and the Law, or between one Law and another Law.

The conceptual approach departs from the views and doctrines that develop in legal science. By studying views and doctrines in legal science, researchers will find ideas that give rise to legal understandings, legal concepts and legal principles that are relevant to the legal issues in this research. Understanding these views and doctrines is a basis for researchers in building legal arguments in solving legal issues in this research.

Philosophical approach, with a comprehensive, fundamental and speculative nature of philosophy, in this normative type of dissertation research, the researcher will examine and then analyze in depth and radically the legal issues raised in this dissertation. A historical approach is an approach used to find out the historical values that are the background and influence²⁰ of the values contained in a statutory regulation. This historical approach is used to research and study history in relation to discussions that are topics in legal research. Researchers want truth not only based on dogmatic truth, but also want historical truth contained in statutory regulations. This approach is carried out within the framework of understanding the philosophy of legal rules over time, as well as understanding changes and developments in the philosophy that underlies these legal rules. This approach is carried out by examining the background and development of regulations regarding the legal issues being

faced. A comparative approach is a type of approach where researchers try to compare both with other countries and with events that have occurred in one country. For this reason, this research is known as 2 comparative approaches, namely the macro comparative approach and the micro comparative approach.²¹ The macro comparative approach (macro comparative approach) is used to compare an event or legal incident that occurred in various countries, while the micro comparative approach (microcomparative approach) only compares within a certain country within a certain time period.

Legal Research Materials

The legal materials used in this research are secondary data in the form of literature books discussing Employment Law, plus legal materials in the form of scientific works by experts, journals and papers related to this research. Secondary data can be grouped into primary legal materials and secondary legal materials.

- 1) Primary Legal Materials, namely legal materials that are binding. Consist of:
 1. The 1945 Constitution of the Republic of Indonesia,
 2. Civil Code (Burgerlijk Wetboek, Staatsblad 1847 No. 23),
 3. Law No. 13 of 2003 concerning Employment,
 4. Law No. 11 of 2020 concerning Job Creation,
 5. Law No. 25 of 2007 concerning Investment
 6. Law No. 6 of 2011 concerning Immigration
 7. Government Regulation No.34 of 2021 concerning Foreign Workers
 8. PP No.35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time,as well as various other provisions under the Law (Government Regulations, Presidential Regulations, Ministerial Regulations) which are relevant to the topic under study.
 9. Minister of Manpower Regulation No 8 of 2021 concerning the Use of Foreign Workers
- 2) Secondary Legal Materials Legal materials that provide explanations of primary legal materials, such as textbooks, journals, and papers related to the title of this research.
- 3) Tertiary legal materials, namely supporting legal materials that provide instructions and explanations for primary legal materials and secondary legal materials, including dictionaries or encyclopedias, as well as materials via information technology (internet) according to the problem being created.

Legal Material Collection Techniques

This research began with collecting primary legal materials and secondary legal materials. Primary legal materials include all statutory regulations related to Employment/Labor Law. Secondary legal materials include several books containing a series of theories and concepts

about law, results of previous research, scientific articles, journal papers and others. Next, classification of legal materials is carried out. Classification is defined as an effort to place the meanings contained in legal materials into an interrelated arrangement according to the similarities in a series of elements that exist in the meaning itself in a logical and systematic manner.

In the legal science tradition, three elements are known to guide researchers in classifying legal materials so that the classification process is in a logical and systematic corridor. These three corridors are the essence of law, sources of law, and types.²² In this dissertation research, the legal issue raised is the Reconstruction of Foreign Worker Regulations in National Law. Especially after the enactment of Law No. 11 of 2020 which was then amended by the issuance of Government Regulation in Lieu of Law (PERPU) No. 2 of 2022 concerning Job Creation in chapter IV articles 42 to article 49 concerning the regulation of foreign workers (TKA) which discusses the elimination and changes to several provisions in Law No. 13 of 2003 concerning Manpower which were previously enforced.

Legal Material Processing and Analysis Techniques

As a legal dogmatic research, normative legal materials are processed in the following stages: structuring, describing and systematizing legal materials which consist of three levels, namely the technical level, teleological level and external systematization level.²³ After collecting legal materials, they are analyzed to obtain a clear picture so that it is useful to draw conclusions. The aim of analyzing legal materials is to obtain evidence of the extent to which theoretical conclusions relate to existing reality.

RESULTS AND DISCUSSION

Legal Construction of Foreign Workers in Law No. 13 of 2003 in conjunction with Government Regulations in Lieu of Law (PERPU No. 2 of 2022) Junto Law No. 6 of 2023 concerning Job Creation (Employment Clusters).

Regulations related to employment need to be analyzed and evaluated considering that there are still several employment regulation issues which are a matter for consideration for legal certainty and protection for Indonesian workers/laborers including investors before investing in Indonesia, one of which is related to the issue of the use of foreign workers (TKA). The government needs to organize foreign workers to facilitate the flow of investment so that the economy moves faster and creates more job opportunities.

Restricting the excessive use of foreign workers and placing them in certain positions or positions in companies and industries in Indonesia needs to be done now, this is an anticipatory step for the government to avoid the emergence of social conflict and social jealousy in society, but instead provide space and open up job opportunities. For Indonesian Citizens (WNI) it is important to expand. The current paradigm of using foreign workers in almost every country cannot be separated from their participation in regional and international forums and organizations, so that every country involved in it must follow the applicable rules and comply with the rules agreed in these forums. . This is because there is a connection between countries

in implementing various interests. So that there will be consistent and sustainable relations between countries that collaborate with each other. However, this problem must be followed by the establishment of good regulations and arrangements by adapting to the situation and conditions of the country's need for expert personnel who have certain abilities, skills and expertise in the fields of science and technology which are really needed in order to develop and accelerate national development. The movement of using foreign workers in companies established in Indonesia needs to be controlled and supervised by the state, so that legal problems and excessive use of foreign workers do not occur. The government must regulate policies regarding foreign workers using a selective policy model. Mainly also related to licensing and use of foreign workers in unskilled labor.

In reality, currently existing labor regulations do not provide a definite picture regarding the regulation of the use and supervision of foreign worker mechanisms in Indonesian territory. Moreover, with the issuance of Law No. 11 of 2020 which was then amended again with the publication of Perpu No. 2 of 2022 concerning Job Creation, which further minimizes mechanisms and regulations regarding foreign workers. Even though this issue often arises as a national strategic problem when faced with national employment certainty and protection, especially with the implementation of globalization which can affect workforce performance due to foreign investment or also known as foreign direct investment. However, with the rapid flow of foreign investment in Indonesia, several companies prefer to meet the need for professional and expert workers from the company's home country. So special attention is needed to improve the skills and knowledge of the workforce. However, the state's role in relation to employment issues is not yet optimal because it is still influenced by the factors that cause excess foreign workers in Indonesia, including: 1) the investment openness factor, considering that Indonesia is currently carrying out a lot of development which brings in investors in one package with its workforce, from managers to workers. rough; 2) visa-free policy factors; and 3) factors in the implementation of the MEA which resulted in the disappearance of boundaries between countries and the increase in the presence of foreign workers in Indonesia.²⁴

Therefore, in the use of foreign workers, it is necessary to implement a strict mechanism that does not violate the mandate of Article 27 paragraph (2) of the 1945 Republic of Indonesia Constitution. At the constitutional level, the protection of Indonesian workers more specifically lies in Article 27 paragraph (2) of the 1945 Republic of Indonesia Constitution. Regarding employment so far it has only been based on Law Number 13 of 2003 which has not even been harmonized with other regulations. In its implementation, several policies adopted are generally sporadic and rarely solve problems in the field. Even though at least strategic steps are needed in implementing policies such as; 1) combine action plans for a program by setting clear objectives, implementation standards, time and costs; 2) implement the program by mobilizing structures, resources, staff, procedures, costs and methods; and 3) create an implementation and monitoring schedule to ensure that the program continues according to planning.²⁵

Before the issuance of PP No. 34 of 2021 concerning the Use of Foreign Workers, the government first issued Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers (Presidential Decree Number 20 of 2018)²⁶ which is actually inconsistent (disharmonious) with Law Number 13 of 2003. For example, the provisions in Article 9 of Presidential Decree Number 20 of 2018 state that the ratification of the RPTKA is a permit to employ foreign workers. This means that business entities or companies that want to use foreign workers are not required to obtain permits. This is contrary to Article 43 paragraph (1) of Law Number 13 of 2003 which states; Employers who wish to use foreign workers must have an RPTKA approved by the minister or appointed official.

The explanation in Article 43 paragraph (1) of Law Number 13 of 2003 explains that RPTKA and Permit to Use Foreign Workers (IMTA) are two different things, where RPTKA is a later requirement for obtaining a permit. Meanwhile, permits are described in the provisions of Article 42 paragraph (1) of Law Number 13 of 2003 as follows; Every employer who employs foreign workers is required to have written permission from the minister or appointed official to validate it. The ratification of the RPTKA can be carried out by the director general for TKA employers who employ 50 (fifty) or more TKA and the director for TKA employers who employ less than 50 (fifty) TKA

The issuance of Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers which replaces Presidential Regulation Number 72 of 2014 concerning the Use of Foreign Workers and the Implementation of Education and Training for Accompanying Workers, aims to simplify licensing in Indonesia which is considered to be still complicated and expensive. . In order to simplify licensing, the Presidential Regulation still includes conditions that foreign workers must fulfill, including having skills or competencies, middle to upper level, only occupying certain positions, length of work, and having to pay compensation. In fact, the Presidential Regulation stipulates that Indonesian or local workers must be prioritized. However, it turns out that Presidential Regulation Number 20 of 2018 has caused many problems both at the normative and implementation levels.

Some of the provisions in the Presidential Regulation as mentioned in the table above are not in accordance with Law Number 13 of 2003 concerning employment, for example Article 9 of Presidential Regulation Number 20 of 2018 states that the Plan for the Use of Foreign Workers (RPTKA) is a permit. working for foreign workers. This is contrary to Article 43 paragraph 1 of Law Number 13 of 2003. "Article 43 paragraph 1 states that TKA employers must have an RPTKA which is ratified by the minister or appointed official. In his explanation, the RPTKA is a requirement to obtain a TKA work permit. Another thing The opposite is the provision of Article 10 paragraph (1a) which states that TKA employers are not required to have RPTKA to employ TKA who are shareholders, serve as directors and members of the board of commissioners, while in Law Number 13 of 2003 there is no exception, all of them must have one. permission.

Even though in a normative and empirical setting the substance of the Regulations in Presidential Decree No. 20 of 2018 has generated a lot of problems and public opposition among workers/laborers, the substance has been strengthened again with the issuance of Law

No. 11 of 2020 concerning Job Creation and its implementing regulations in Government Regulation No. 34 of 2021 Regarding the use of foreign workers, then also the issuance of Minister of Manpower Regulation No. 8 of 2021 concerning Procedures for the Use of Foreign Workers, which in essence continues to provide flexibility to employers who use foreign workers no longer need permission to employ foreign workers in Indonesia, which is replaced by a request for a document planning the use of foreign workers. (RPTKA).

The ratification of the Job Creation Law has an impact on several regulations that are already in effect in Indonesia. One of them is the provisions related to Foreign Workers (TKA) in Law Number 13 concerning Employment (Employment Law). The Job Creation Law has changed and removed several TKA provisions in the Employment Law. Previously, Article 42 paragraph (1) of the Manpower Law required that every employer who employs foreign workers must have written permission from the Minister or appointed official. The rules regarding these permits are further regulated in Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers (Perpres 20/2018). Presidential Decree 20 of 2018 states that foreign workers entering Indonesia must have a number of permits, including a Limited Stay Visa (VITAS), Plan for Using Foreign Workers (RPTKA), and Permit to Use Foreign Workers (IMTKA). After the passing of the Job Creation Law, the processing of foreign worker permits experienced cuts. Every employer who employs foreign workers is required to have a Plan for the Use of Foreign Workers (RPTKA) which is approved by the Central Government. (Article 81 number 4 of the Job Creation Law).

Then the provisions regarding the use of foreign workers are further regulated in Government Regulation No. 34 of 2021 concerning the use of foreign workers, stipulated on February 2 2021. In the government context, this government regulation is needed to encourage the acceleration of national development through the selective use of foreign workers with the requirements and restrictions on foreign workers. Who will be employed through determining certain positions and certain times that can be occupied by foreign workers, and is a bridge to the government's role in improving the quality and role of the workforce in national development in accordance with human dignity and dignity. Therefore, if investment requires the use of foreign workers, the use of foreign workers is directed at accelerating the national development process through the transfer of technology and the transfer of skills from foreign workers to foreign workers assisting foreign workers. Therefore, guidance and supervision of the use of foreign workers is carried out by the Central Government and Regional Governments in order to create a conducive investment climate for creating the widest possible employment opportunities for Indonesian workers and law enforcement and administrative sanctions for TKA employers for violations of norms for the use of foreign workers.

One of the significant changes in Government Regulation No. 34 of 2021 concerning the Use of Foreign Workers is removing permits to employ foreign workers (IMTA). In previous regulations, Law No. 13 of 2003 concerning Manpower, the TKA Use Plan (RPTKA) and IMTA were the core documents in licensing the use of TKA. The simplification of the use of foreign workers has been further emphasized through the issuance of Law No. 11 of 2020 concerning Job Creation and PP No. 34 of 2021. Online permit processing through online TKA

and OSS makes it easier for companies that want to use TKA. The Job Creation Law and PP No.34 of 2021 provide clarity regarding various provisions that have been regulated since 2018. Apart from that, it regulates several updates which are in the nature of streamlining bureaucracy or time required, as well as simplification. PP No. 20 of 2018 regulates several types of RPTKA, namely ordinary RPTKA; RPTKA work is temporary (maximum 6 months); and RPTKA is emergency and urgent. Currently, through PP No.34 of 2021, a new concept is introduced, namely that work is temporary, a maximum of 6 months and cannot be extended; work for more than 6 months, a maximum of 2 years and can be extended; non-funded Compensation for the Use of TKA (DKP-TKA), a maximum of 2 years and can be extended; Special Economic Zones (KEK), a maximum of 5 years and can be extended.

PP No. 34 of 2021 and the Regulations explain in detail what documents are needed in the process of using TKA, where previously this explanation was not mentioned in detail in Permenaker No. 10 of 2018. For example, the documents needed to apply for RPTKA approval include identity. employer; reasons for using TKA; position or position of foreign workers in the company's organizational structure; number of foreign workers; the period of use of TKA; TKA work location; identity of TKA accompanying workers; and plans to absorb Indonesian workers every year. Supporting documents required in an application for RPTKA approval include an application letter; business registration number and/or business permit of the TKA employer; deeds and decisions ratifying the establishment and/or changes from the competent authority; proof of mandatory employment reporting at the company; draft employment agreement or other agreement; company organizational structure chart; statement letter for the appointment of TKA assistant workers; a statement letter to carry out education and job training for Indonesian workers in accordance with the qualifications of the position held by the TKA; and a statement letter to facilitate Indonesian language education and training for foreign workers. If the foreign worker is fluent in Indonesian, the company only needs to provide a statement letter explaining that the foreign worker is fluent in Indonesian.

PP No. 34 of 2021 also regulates exceptions to RPTKA ratification. This exception applies to directors or commissioners with certain share ownership, or shareholders; diplomatic and consular employees; and foreign workers needed for production activities that are stopped due to emergencies, vocations, technology-based start-ups, business visits and research for a certain period of time. The RPTKA exemption provisions for start-ups and vocations require TKA employers to submit prospective TKA data online to the Ministry of Manpower. Next, it is submitted to the Directorate General of Immigration for recommendations for visas and residence permits for work purposes. The RPTKA Approval exception period for start-ups and vocations is a maximum of 3 months. For emergency activities, business visits and research, foreign workers can enter and stay in Indonesia using a visa and residence permit in accordance with immigration regulations. For directors or commissioners who receive an exception to RPTKA approval, the person concerned must have a certain number of shares as regulated in Head of BKPM Regulation No. 5 of 2019 concerning Amendments to BKPM Regulation No. 6 of 2018 concerning Guidelines and Procedures for Licensing and Investment Facilities. As a shareholder and director/commissioner, share ownership is a minimum of IDR 1 billion, and as a shareholder, but not a director/commissioner, a minimum of IDR 1.125 billion.

Legislative regulations must really pay attention to appropriate content material in accordance with the type and hierarchy of statutory regulations. An assessment of this dimension is carried out to ensure that the statutory regulations in question are in accordance with the hierarchy of statutory regulations. That legal norms are tiered in a hierarchical structure, in the sense that a lower norm applies sourced and is based on a higher norm, a higher norm applies sourced and based on an even higher norm, and so on until a norm that is not can be explored further in the form of basic norms (grundnorms). Lower statutory regulations must not conflict with higher statutory regulations (lex superioriderogat legi inferior). In the Indonesian legal system, statutory regulations are also arranged in stages as regulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

Fair reconstruction of Foreign Employment Law based on the Ideal of National Law.

There are two groups that respond to the use of foreign workers in a country, whether the foreign workers used have an impact on economic development and progress and increasing human resources in the user country. Optimistic groups, such as studies conducted by Bort & Stain (1975), Simon (1988) in America; Zimmerman (1995) in Europe; Dickson (1975), Norman Meikle (1985) in Australia, Idris & Rahmah (2006), Bachtiar et.all (2015) in Malaysia, found a positive relationship between the influx of foreign workers on economic growth, employment opportunities and wages. The reasons put forward by this research group include: First, the supply of foreign workers always creates demand (Supply creates its own demand). Second, the influx of foreign workers from other countries can produce economies of scale. Third, foreign workers have higher education and skills than local workers. Fourth, foreign workers and local workers are able to work together in the production process.²⁷

In contrast, studies conducted by Greenwood & McDowell (1986), Borjas (1983, 90,94,96) in the USA; Baker (1987) Australia; Baker & Benjamin (1994) in Canada found that the influx of foreign workers hampers economic growth, expansion of employment opportunities and increases in wage levels for the reasons: First, the influx of foreign workers does not go through the correct procedures and utilizes capital (facilities) at the destination without them having to pay for it (tax). Second, there is no economic scale (dis-economic of scale). Third, foreign workers have lower education and skills than local (non-migrant) workers. Fourth, foreign workers are competitors (substitutes) with local workers.²⁸

In general, it is known that there are two types of legal discovery methods, namely the interpretation method and the construction method. There are many methods of interpretation, each of which is complementary. Each method has its own characteristics, so there is no indication as to which method should actually be used in a concrete case. According to Burght and Winkelman, in the past there had indeed been 'fought for' a rigid guideline for the choice of interpretive methods, but against this hope, what was ultimately obtained was only vague clues. This was because it was difficult to gain an understanding of the motives. actually from the judge in making a particular decision because all that is visible are the arguments put forward explicitly in the verdict.²⁹

According to Scholten, the discovery of law (*rechtsvinding*) is different from the application of law (*rechtstoepassing*), because here something new is discovered. Legal discovery can be done either through interpretation, or analogy, or legal refinement (*rechtsverwijning*). Law enforcement is not only carried out with the logic of applying the law which relies on the use of logic (*een hanteren van logicalche figuren*), but also involves judgment, entering the realm of giving meaning. Through syllogisms and logical conclusions, nothing new will be discovered, as is desired by the discovery of law.³⁰

In the present era, law should not only adapt to changes in society, but also how law can be a driving factor towards change in society (law is a tool of social engineering). Due to the rapid development of society, it is impossible for legislative regulations to cover all events as completely and clearly as possible, so there is a need for legal discovery.³¹ Law has lost its prescriptive aspect because it is not based on *sein* reflection, but is more pragmatic through political lobbying. As stated by Mahfud MD in an empirical study through his dissertation, it is very clear that political configuration greatly influences legal products.³²

One of the strongest possibilities in the background to the issuance or formation of Law No. 11 of 2020 Jo Perpu No. 2 of 2022 Junto Law No. 6 of 2023 concerning Job Creation is that the thinking of legislative institutions is very political rather than normative, and its existence as law is indeed questionable. This means that the creation of norms by the legislature is not based on an understanding of legal science, but is limited to political science, so that such a law is not law in Sollen's sense, which refers to legal theory but is based more on political policy. Therefore, the most prominent force is not the aspect of sociological demands for law to create order and social order (social engineering), but rather the state's domination through law as a means of legitimizing power to be able to impose its will on society in general. Law no longer appears with its transcendental and metaphysical nature so that the antecedents of morality take precedence, but law appears as a tedious political force that is legitimized by its coercive nature and seems more forced.

Roscoe Pound stated that law is a tool for renewing (engineering) society (law as a tool of social engineering). To be able to fulfill its role as a tool, Pound made a classification of interests that must be protected by law, namely: public interest, social interest and finally private interest. From this classification, Pond explains that the approach to law is as a path towards social goals and as a tool in social development and this classification helps explain the premises of law so as to make law makers, legislators, judges, lawyers and law teachers aware of the principles. And the values related to each specific issue. In other words, the classification helps link principles (law) and practice.³³

According to Satjipto Rahardjo, the steps taken in social engineering are systematic. Starting from identifying the problem to solving it, it is as follows: 1) Get to know the problem being faced as well as possible, including carefully identifying the community that will be the target of the work; 2) Understand the values that exist in society. This is important if social engineering is to be applied to communities with multiple sectors of life, such as: traditional, modern and planning. At this stage, the values of which sectors are selected are determined; 3) Create hypotheses and choose which ones are important and feasible to implement; 4) Follow

the implementation of the law and measure its effects.³⁴ In Indonesia, the Pound concept was developed by Mochtar Kusumaatmadja, law in Mochtar's concept is not interpreted as a "tool" but as a "means" of societal reform. The main ideas underlying this concept are: a) That order and regularity in development and reform efforts are indeed desirable, even absolutely necessary; b) That law in the sense of rules is expected to be able to direct human activities in the direction desired by development and reform. For this reason, a means is needed in the form of written legal regulations (both legislation and jurisprudence) and the written law must be in accordance with the laws that exist in society. The concept of law as a means of reforming Indonesian society is broader in reach and scope than in the United States, where it was born. The reason is that legislation is more prominent in the process of legal reform in Indonesia and the rejection of the application of the mechanism of this concept is described as resulting in the same result as the application of the legalism ideology which is widely opposed in Indonesia. That is why Mochtar Kusumaatmadja tends to use the term means rather than tools.³⁵

Other developers of the theory of justice, such as John Rawls, are figures who believe that ethical principles can be a strong basis for building a just society. Justice is the main virtue in social institutions, as is truth in systems of thought because everyone has honor that is based on justice so that even the entire community cannot cancel it, on this basis justice rejects if the loss of freedom for some people can be justified by greater things that people gain other. Justice does not allow sacrifices imposed on a few to be weighed against the majority of benefits enjoyed by many, therefore in a just society the freedoms of citizens are considered established and the rights guaranteed by justice are not subject to political bargaining or calculations of social interests. Rawls believes there needs to be a balance between personal interests and the common interest. Pound's own thinking initially started from the mutual influence between law and society. According to Rawls, the concept of justice presents the concept of social justice, namely the principle of rational policy applied to the concept of aggregate welfare (collection of results) of groups, a society is well ordered when its institutions maximize the balance of satisfaction. Justice as fairness seeks to provide common sense confidence regarding the priority of justice by showing that these things are a consequence of the principles that will be chosen in the original position. Fairness is also seen as contractual which assumes that the principles of social choice and the principles of transcendental justice are, but more so, as certain forms of thinking and feeling that can be adopted by rational humans in the world.

A fair legal product certainly results from the formation of a legal product that applies the principles of justice. Talking about the formation and results of fair legal products will be related to the definition or understanding of justice itself. Social justice for all Indonesian people as the fifth principle of Pancasila, is the goal of the other four principles. It contains other precepts. Then, in the Preamble to the 1945 Constitution of the Republic of Indonesia, it was stated that it "delivers the Indonesian people to the front gate of the independence of the Indonesian state, which is independent, united, sovereign, just and prosperous". The words "fair and prosperous" are written explicitly, so that it is clear that the state life of the Indonesian nation must uphold justice.³⁶

One of the state's goals stated in the Preamble to the 1945 Constitution of the Republic of Indonesia is to promote general welfare. The words "just" are stated firmly in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. The words just and prosperous cannot be separated, which reflects that the Indonesian nation desires to implement justice in all things without forgetting to make the Indonesian people prosperous. . Prosperous is close in meaning to prosperous.³⁷ The definition of prosperity is achieving the fulfillment of life's needs. Integrated and comprehensive national development based on just and prosperous principles gives rise to general prosperity.³⁸ The fifth principle of Pancasila can be interpreted as meaning that justice is realized, not only for someone or some people but for and felt by all Indonesian people. If social justice is defined as social happiness, then to achieve social happiness, individual social needs must be met. Fair rules ensure the fulfillment of individual and social needs.³⁹

Therefore, in making a legal product, the principle of justice must be applied. This is stated in Article 6 of Law no. 12 of 2011 concerning the Formation of Legislative Regulations which states that one of the material principles of the content of statutory regulations is the principle of justice. In the Explanation of Law no. 12 of 2011, what is meant by "principle of justice" is that every material contained in statutory regulations must reflect proportional justice for every citizen.

The principle of justice binds not only society but also rulers, as expressed by Ulpian. If we relate it to the government, the authorities in making a legal product must not ignore the principles of justice. The regulations made must be able to accommodate various interests for the welfare of the wider community. Job opportunities for Indonesian people are related to the interests of the wider community, a decent living, which ultimately leads to prosperity. The hope of gaining prosperity through decent work and equal opportunities to obtain it cannot be ignored. As stated in Article 5 of Law no. 13 of 2003 concerning Employment which states "every worker has the same opportunity without discrimination to obtain work". As Ulpian said, justice binds the authorities and society, so that Law No. 11 of 2020 Junto Perpu No. 2 of 2022 Junto Law No. 6 of 2023 concerning Job Creation Chapter IV Jo PP No. 34 of 2021 concerning the use of foreign workers disturbs the principles of justice (*Justitia Constant Et Perpetua Voluntas Ius Sumcuique Tribuere*).⁴⁰ The community feels disturbed, distinguished by the convenience provided to foreign workers in the name of increasing investment.

The Law on Job Creation and PP No. 34 of 2021 which replaces Presidential Decree No. 20 of 2018 was established with the aim of supporting the national economy and expanding employment opportunities through increasing investment. In line with the increasingly rapid flow of investment, Indonesia is also considered to have increasing potential to receive foreign workers with certain qualifications required for investment. This is to ensure national interests by increasing the attractiveness of investment and the interest in absorbing domestic labor. For this reason, regulations are needed to regulate the entry of foreign workers.

Such conditions are contradictory to the government's attitude in issuing Law No. 11 of 2020 Jo Perpu No. 2 of 2022 Junto Law No. 6 of 2023 concerning job creation and then implementing regulations PP No. 34 of 2021 concerning the Use of TKA. In article 81 number

4 which amends provision 42 of Law No. 13 of 2003, it states "Every employer who employs foreign workers is required to have a plan for the use of foreign workers approved by the central government" meaning that permission to use foreign workers is no longer needed, this is in contrast to the government's objectives as outlined in the direction of employment development policy which is aimed at realizing "a Prosperous, Fair and Sustainable Middle-High Income Indonesia",⁴¹.

Referring to John Rawls' opinion, social and economic differences must be arranged in such a way as to provide great benefits for those who are most disadvantaged. If we assume that the unemployed in our country are those who are "less fortunate", it could be said to be unfair if it is actually easier for foreign workers to work in Indonesia. According to A. Hamid S. Attamimi, just law (*richtigen recht*) is positive law which has characteristics that are directed by legal ideals to achieve society's goals. If we relate it to the goals of society which we then return more broadly to the goals of the state, namely advancing prosperity, then the convenience and support given by the Government to foreign workers through Law No. 11 of 2020 and PP No. 34 of 2021 cannot be said to be in line with the goals. Country.

If you look at the regulations regarding foreign workers in Law No. 11 of 2020 and Perpu No. 2 of 2022 in conjunction with Law No. 6 of 2023 concerning Job Creation, the substance of the articles that regulate this is very minimalist, while the issue of foreign workers often becomes a national problem or issue because of the impact it has on In society, especially among national workers/laborers, the use of foreign workers means that the space and opportunities to work for Indonesian citizens are decreasing, especially with the condition of increasing unemployment among workers of productive age. When compared with countries such as China and the Republic of Korea, the regulatory system for foreigners who work and enter these countries is very selective and full of caution and really takes into account strategic needs and is integrated with development, economic development and national resources. .

Therefore, the author also proposes that in order to complete the legal reconstruction that has been described previously, in the administration and management of foreign workers, the government establishes a policy agency for the use of foreign workers, hereinafter abbreviated as (LKPTKA), an agency or institution which will specifically have the task of implementing policies for implementation, services and managing the use of foreign workers in an integrated manner and becoming an institution that can coordinate and collaborate with other related government institutions. LKTKA is a non-ministerial government institution whose task is to implement policies in the implementation, service and management of foreign workers (TKA) in an integrated manner. LKTKA is under and responsible to the President through the minister who handles government affairs in the field of employment.

Regarding Indonesia's current needs regarding the use of foreign workers, it is important to establish a Policy Institute for the Use of Foreign Workers as an institution responsible for regulating the use of foreign workers in Indonesia. This is important because Indonesia is a country with abundant human resources but they have not been fully utilized optimally for the progress of the country's development. Therefore, the implementation of the use of foreign workers needs to be carried out in a wise and measurable way to maximize the benefits that

can be obtained by Indonesia. The Policy Institute for the Use of Foreign Workers is also important to ensure that the use of foreign workers does not harm local workers and does not cause social jealousy in society. Apart from that, this institution can also provide recommendations and assistance in terms of training and development of local workers so they can compete with foreign workers. Apart from that, the Policy Institute for the Use of Foreign Workers can also act as an institution responsible for ensuring the use of foreign workers who meet the requirements and have the skills and expertise needed in industrial sectors that are developing in Indonesia. In this way, foreign workers can make a positive contribution to Indonesia's economic development and strengthen Indonesia's position in the global market. Overall, the establishment of a Policy Institute for the Use of Foreign Workers in Indonesia is important to maximize the country's development potential while still paying attention to the welfare and interests of local workers and ensuring that the policy on the use of foreign workers in Indonesia is carried out in a wise and measurable manner.

Regarding the membership of bodies or institutions, policies on the use of foreign workers can be taken from government institutions or related ministries and can also include independent non-government institutions or institutions. This institution is an autonomous or independent institution formed with a new organizational structure and membership that is not recruited from departments, ministries. and existing government institutions. In the author's perspective, the formation of an independent policy agency for the use of foreign workers would be better because it would be able to provide objective assessments and not be tied to the interests of certain institutions or departments or ministries. Apart from that, independent institutions can also be more accountable and transparent in carrying out their duties. However, it is also important to ensure that this institution has quality management and staff membership and adequate resources in order to carry out its functions and duties effectively and efficiently.

The use of Foreign Workers (TKA) in Indonesia is very important to strengthen national economic development. However, the use of foreign workers must also be balanced with appropriate policies so that it does not have a negative impact on the sustainability of the Indonesian economy. In this case, the establishment of the Policy Institute for the Use of Foreign Workers in Indonesia has an important role in reviewing, supervising and providing policy recommendations for the effective and efficient use of foreign workers.

Reform or changes to a system should be supported by the availability of regulatory instruments (legislation) so that there is "legal certainty" for efforts to restore and develop the national economy at both central and regional levels. consistently by Central and Regional Government officials as well as reforms and regulations in the field of employment, especially foreign workers (TKA) which have a correlation with the investment sector, so that the protection of national workers becomes a top priority and so that business activities can develop and increase so that there is employment and increase the production of goods and services and be competitive.

CONCLUSION

Based on the research results, it is concluded that the legal reconstruction of fair foreign worker regulations established by the legislature must be based on an understanding of legal science, but not limited to a study of understanding political science, so that the law that is formed is law in the sense of legal discovery as a crystallization, concretization of legal regulations as they should be (*das sollen*), which refers to legal theories and legal principles. Law must emerge with its transcendental and metaphysical nature so that the antecedents of morality must take precedence, but it does not give rise to law as a political force that is legitimized by its coercive nature and gives the impression of being forced. If it is connected to the goals of society, which we then return more broadly to the goals of the state, namely advancing general welfare, protecting all Indonesian people, then the convenience and support given by the state to foreign workers through Law No. 11 of 2020 which was amended by Perpu No. 2 of 2022 in conjunction with Law No. 6 of 2023 concerning the Determination of Perpu No. 2 of 2022 into Law and PP No. 34 of 2021 cannot be said to be in line with state objectives. Therefore, it is important to reconstruct the regulation of the use of foreign workers in the form of regulations and laws that are clear and can be monitored so that they can provide fair legal certainty in accordance with Pancasila and the 1945 Constitution as national legal ideals for foreign workers and at the same time protect the interests and interests of foreign workers. domestic labor rights.

References

- 1) *ASEAN Economic Community* or the ASEAN Economic Community (AEC), which was ratified at the 27th ASEAN Summit in Kuala Lumpur on 22 November 2015, is a cooperative effort by ASEAN member countries to strengthen their position in the global value chains (GCVs) amidst global economic shocks and turmoil. . See ASEAN Economic Community Blue print 2025.
- 2) Chia Siow Yue In Makmur Keliat et al., Mapping Indonesian skilled workers and the liberalization of ASEAN services. Research report from the ASEAN Study Center, University of Indonesia in collaboration with the Ministry of Foreign Affairs of the Republic of Indonesia, 2013, p. 24.
- 3) Jimly Asshiddiqie, *Agenda for National Legal Development in the Age of Globalization*, Cet 1, Jakarta, Balai Pustaka, 1998, p. 49.
- 4) National Legal Development Agency, Department of Law and Human Rights of the Republic of Indonesia 2005, *Final Report of the Research Team on Legal Problems of Foreign Workers in Indonesia*.
- 5) <https://databoks.katadata.co.id/datapublish/2021/07/06/besar-tenaga-kerja-asing-di-indonesia-turun-sebuah-pandemi-covid-19..>
- 6) <https://satudata.kemnaker.go.id/data/data%20TKA%20tahun%202018-2021>
- 7) Faisal Batubara or better known as Faisal Basri is an economist and politician from Indonesia. Faisal Batubara or better known as Faisal Basri (born 6 November 1959) is an economist and politician from Indonesia. He was one of the founders of Mara (Majlis Amanah Rakyat) (which was the forerunner of the National Mandate Party) and several non-profit organizations such as the Harkat Bangsa Foundation, the Global Rescue Network, and the Indonesian Enlightenment Foundation. Since 2000, Faisal has also been appointed as a member of the Business Competition Supervision Commission (KPPU).

- 8) Read the detikfinance article, "Faisal Basri talks about his criticism and is called anti-Chinese investment" in [fullhttps://finance.detik.com/interview-cepat/d-5791240/faisal-basri-cepat-soal-kritikannya-besar-cepat-cepat-anti-investasi-china](https://finance.detik.com/interview-cepat/d-5791240/faisal-basri-cepat-soal-kritikannya-besar-cepat-cepat-anti-investasi-china).
- 9) Chapter 1, Article 1, no 13, General Provisions of Law No 13 of 2003 concerning Employment.
- 10) In the 2019 presidential election, Joko Widodo was re-elected as President of the Republic of Indonesia for his second term. This time, Joko Widodo was accompanied by Vice President KH Ma'ruf Amin and was inaugurated on October 20 2019 for the 2019 to 2024 term of office.
- 11) Law No. 6 of 2023 concerning the Determination of Perpu No. 2 of 2022 concerning Job Creation into Law, this was ratified on March 31, 2023 with its placement in the State Gazette of the Republic of Indonesia no. 41. Read: <https://nasional.kompas.com/read/2023/01/16/19272461/survei-litbang-kompas-70-persen-publik-khawatir-kena-dampak-buruk-uu-buat?source=widgetML&engine=J>. Accessed January 20, 2023.
- 12) Bernard Arief Sidharta, "Normative Legal Research: Analysis of Philosophical and Dogmatical Research", Constellation and Reflection Legal Research Methods, Indonesian Obor Foundation, Jakarta 2009, p. 142.
- 13) Peter Mahmud Marzuki, Legal Research Revised Edition, Kencana Prenadamedia Group, Jakarta 2005. Page. 60.
- 14) Soetandyo Wignjosoebroto "Variety of Legal Research" p.122. opcit.
- 15) Kuncoro Sejati, Global Warming, Food and Water: Problems, Solutions, and Changes in the World Geopolitical Constellation, Yogyakarta: Gadjah Mada University Press, 2011. p. 7.
- 16) Mukti Fajar, Yulianto Achmad, Dualism of Normative & Empirical Legal Research, Yogyakarta: Learning Library, 2013. p. 36.
- 17) S. Nasution, *Research Methods (Scientific Research) Thesis proposal, Research Design, Hypothesis, Validity, Sampling, Population, Observation, Interview, Questionnaire*, (PT. Bumi Aksara, Jakarta, 4th printing, 2011), p. 16
- 18) CFG Sunaryati Hartono, *Legal Research in Indonesia at the End of the 20th Century*, (Bandung: Alumni Publishers, 2nd printing, 2006) 139.
- 19) Ade Saptomo, Basics of Legal Research Methods, Surabaya, Unesa University Press, 2007, p.88.
- 20) M. Van Hoecke, Aard en Methode van de Rechtswetenschap in B. Arief Sidharta, Reflections on the Structure of Legal Science, Bandung, Mandar Maju, 2000, p.67.
- 21) Nurhidayati, Foreign Worker Licensing, Policy and Implementation," Widya Cipta: Secretarial and Management Journal 3, no. 2 (2019): Pp. 247.
- 22) Rizky Dian Baretta, Political and Legal Protection of Indonesian Workers in the Post-Employment Phase, Kanun Journal of Legal Studies 20, no. 1 (2018): 173, <https://doi.org/10.24815/kanun.v20i1.9828> .
- 23) PERPRES NO 20 of 2018 revokes the provisions in PERPRES No. 72 of 2014 Regarding the Use of Foreign Workers and the Implementation of Education and Training for Accompanying Workers.
- 24) Nasri Bachtiar, Main Ideas Regarding Foreign Workers in Indonesia, Paper Presented at the General Hearing Meeting of the Special Committee (PANSUS) for Foreign Workers of the Republic of Indonesia DPD, Senayan Jakarta, 24 August 2017.
- 25) Gr. Van der Burght & JDC Winkelman, "Case Settlement," Translated by B. Arief Sidharta, Pro Justisia Journal, Year XII No. January 1, 1994, p. 44.
- 26) See Scholten, in Anton Freddy Susanto, 2005, Legal Semiotics and Emocracy, Texts Towards Progressive Meaning, PT Refika Aditama, Bandung. See also Charles Himawan, 2003, Law as Commander in Chief, Kompas Book Publishers, Jakarta, p. 24.

- 27) Stefanus Laksanto Utomo, In Legal Construction from a Pluralistic Spiritual Perspective, Collection of Thoughts in the Context of Purna Bhakti Prof. Dr. Esmi Warasih Pujirahayu, SH, MS, Thafa Media, 2021, Yogyakarta, p. 163.
- 28) Moh. Mahfud, MD, Indonesian Legal Politics, PT. Raja Grafindo Persada, Depok, p 22.
- 29) Lili Rasjidi, Basics of Legal Philosophy, Citra Aditya Bhakti, 1990, p. 134.
- 30) Satjipto Raharjo, Legal Studies, PT. Citra Aditya Bakti, Bandung Cet.V. 2000, p. 208.
- 31) Lili Rasjidi & Liza Sonia Rasjidi, Basics of Philosophy and Legal Theory, PT. Citra Aditya Bakti, Bandung, 2016. Pg. 79.
- 32) Notonagoro, Pancasila Scientifically Popular (Bumi Aksara 1995) p.157.
- 33) Hendaro Suputra, 'Semantic Study of the word 'Peace and Prosperity' in Indonesian' (2017) 12 Nusa Journal 154, 159.
- 34) Sudjana, 'The Essence of Justice and Prosperity as a Foundation for Life in Realizing Resilience to Achieve a Prosperous Society Through National Development Based on Pancasila' (2018) 24 Journal of National Resilience 135, 136.
- 35) Jimly Asshiddiqie and M. Ali Safa'at, Hans Kelsen's Theory of Press Constitutional Law 2012, p. 17.
- 36) Minister of Manpower of the Republic of Indonesia, Regulation of the Minister of Manpower of the Republic of Indonesia Number 12 of 2020 concerning the Strategic Plan of the Ministry of Manpower for 2020-2024. Policy Direction and Strategy of the Ministry of Manpower. Basically, the policy direction and strategy of the Ministry of Manpower is in line with and supports the agenda, targets and policy direction of national development, economic development, regional development, and development of the state apparatus. The policy direction of the Ministry of Manpower is aimed at realizing "a Prosperous, Fair and Sustainable Middle-High Income Indonesia".
- 37) Article 185 of Perpu No. 2 of 2022 states; With the enactment of this Government Regulation in Lieu of Law, Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia Year 2020 Number 245, Supplement to State Gazette of the Republic of Indonesia Number 6573), is revoked and declared invalid.