

## POSTCOLONIAL PARADIGM IN LAW NUMBER 6 of 2023

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### Abstract

The postcolonial paradigm is a condition regarding the sovereign rights of a country that has become independent from colonialism. However, in determining the path of national life, an independent country is still distorted by old thinking, namely when it was still in the colonial period. Indonesia, as a country that has become independent from colonialism, has firmly stated that 'independence is the right of all nations and therefore, colonialism in the world must be abolished because it is not by humanity and justice'. This is stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. As time passed, the Law Number 6 of 2023 concerning Job Creation was born. Data were analyzed using the intralingual equivalence method to examine linguistic features such as meaning, information, and text. From a forensic linguistics perspective, the relationship between the content of the law and theories related to postcoloniality will be studied. From a legal standpoint, the relationship between the 1945 Constitution as the basis for forming legal regulations in Indonesia and the theory of legal formation in an independent country. The research results found that the postcolonial paradigm is still strong in the content of the articles in the law.

**Keywords:** postcolonial, forensic linguistics, legal formation, and Law Number 6 of 2023.

### Introduction

The 1945 Constitution embodies the noble ideal of a just and prosperous Indonesian society. Its main idea is to realize the legal ideals that govern the basic laws of the country, including both written (UUD) and unwritten laws. Therefore, all laws in Indonesia must refer to the noble ideals of the nation.

In general, the function of law in a country is as a tool of social engineering and as a means of community renewal (Buehler, 2013; Matnuh, 2018; Muttaqin, 2021; Sundari et al., 2023). Similarly, the establishment of Law Number 6 of 2023 (Job Creation Law) concerning Job Creation. However, the law is suspected to have not yet carried out its function by the mandate of the 1945 Constitution as the

legal basis for legislation in Indonesia. This is shown by the rapid inflow of foreign workers (TKA) to Indonesia so that it is possible to shift local workers.

The rapid inflow of foreign workers to Indonesia has not escaped the presence of foreign investors as an influence of globalisation, neo-capitalism, international agreements, and international companies (Van den Bossche, 2007; Budiharto & Praton, 2017; Addy et al., 2020; Fernandez et al., 2020; Fathia et al., 2021; Lamah et al., 2021; Wahyuni et al., 2022). Therefore, there is a need for legal rules that can overshadow the local workforce so that they are not dominated and intimidated by foreigners. Law Number 6 of 2023 is a law passed by the Indonesian government which is

expected to be a tool of social engineering labour in Indonesia. To understand the text of the Job Creation Law, it is necessary to know the meaning of the use of language in articles regulating foreign workers in Indonesia. This is because the language of the text of the law is a register that has a legal impact (Bachari, 2019; Dangwal & Alnuzaili, 2022; Guo et al., 2023; Musawir et al., 2022; Nunnally & Biber, 1999; Paksy et al., 2020).

This study is important so that the Job Creation Law returns to its spirit as a tool of social engineering and as a means of reforming Indonesian society and colonialism does not occur in the post-independence period. In other words, the law contains rules for writing articles with straightforward language that provides legal certainty that can free local workers from foreign influence.

### Methodology

This literature study began by examining the articles in the Job Creation Law that regulates foreign workers in Indonesia downloaded from <https://peraturan.bpk.go.id/Details/246523/uu-no-6-tahun-2023> (Law Number 6 of 2023, 2023). This paper is limited to examining the use of Article 42 paragraph 4 of the Job Creation Law which regulates foreign workers in Indonesia.

Postcolonial data is displayed through excerpts of articles of laws containing foreign labour arrangements. Forensic linguistic analysis was conducted to examine evidence of displacement of local workers by foreign workers who were not by the Job Creation Law. Intralingual equivalent analysis is used to explore the meaning, information and implementation of articles in the Job Creation Law on implementing foreign labour recruitment. Linguistic components are analyzed in compound languages and single languages (Mahsun, 2017).

Forensic linguistics analyzes data from the beginning to determine the meaning of words in articles of the Job Creation Law related to foreign workers. Furthermore, classification reveals the purpose and purpose of data based on articles and their implementation. This article limits the analysis to language in articles that implicitly contain the postcolonial paradigm. Data analysis findings are displayed with detailed language citations as examples and explanations. The results of forensic linguistic analysis yielded general conclusions.

### Finding and Discussion

The Job Creation Law was created to address concerns about the numerous regulations and laws that govern various aspects of the economy, which are sometimes not well-coordinated. To address this, there was a need to establish a comprehensive regulation that would encompass and streamline these various regulations into one coherent legal framework. The introduction to the Job Creation Law mentions that it was developed using the omnibus method, which is why it is also known as the Omnibus Law on Job Creation. This law represents a significant legal innovation aimed at consolidating and harmonizing various legal rules to ensure greater coherence and synchronization (I. Gusti Kade Buddhi Harirasna et al., 2023; Superman & Saptiadi, 2021; Viguna & MP; Rifai, 2021).

Before becoming Job Creation Law Number 6 of 2023, a long journey must be taken by the law to obtain its validity. In 2019, the idea of the Omnibus Law on Job Creation, which was first put forward by President Joko Widodo, drew a lot of criticism and rejection from various circles, especially from workers. Finally, on November 2, 2020, the Job Creation Law Number 11 of 2020 was officially passed and took effect. Even though it has been passed, the Job Creation Law continues to

attract criticism and rejection from the public. In the end, the rejection from the community led to the submission of a judicial review at the Constitutional Court (MK) on November 25, 2021, the Constitutional Court judge ruled that the Job Creation Law Number 11 of 2020 was unconstitutionally conditional. The legal implications of the decision within two years no revision is carried out according to the decision of the Constitutional Court, law is declared invalid. In response to the Constitutional Court ruling, the government issued Government Regulation instead of Law (Perppu) Number 2 of 2022 on March 31, 2023, the government and the House of Representatives enacted Law Number 6 of 2023 (Farisa, 2022).

In the course of history, it is known that there is a Code Napoleon or Civil Code which was born in France after the French Revolution and is called the Code Napoleons because Napoleon was the one who ordered and promulgated French Law as a National Law at the beginning of the XVIII century (Hasanah, 2023). Legal codification is one of the characteristics for countries that adopt the Civil Law legal system. Continental European countries on average adhere to this legal system. The Netherlands is a Continental European country, that also adheres to the pattern of the Civil Law legal system. Correlated with this, it can be understood that Indonesia as a former Dutch colony adheres to the Civil Law legal system and adopts legal codification adopted by Continental European countries.

In the formation of laws, several things need to be considered by lawmakers. According to Gustav Radbruch, the objectives of law include legal certainty, justice, and finality or expediency (Tanya, 2013). Various problems arise with the implementation of the law. The three factors of legal objectives do not run synergistically, in fact, they are often diametrically related to each other. This is

the study of legal experts in analysing the legal implementation of a legal product in the form of laws and regulations. Does the implementation of the law meet the sense of justice? Or does it just fulfil the element of legal certainty?

According to Lawrence Friedman, there are 3 (three) legal systems, namely legal structure, legal substance, and legal culture (Suyatno, 2023). Furthermore, Friedman said that the legal structure and legal substance are rigid and static like a machine and running the machine requires an operator. In this case, the legal culture is the operator. Legal culture encompasses law enforcement officials and the general public.

Looking at the content of the Job Creation Law which has attracted controversy and polemics, it is worth looking at again. The discussion of the Job Creation Law, by a marathon and super-fast, raises a big question mark. Moreover, the content article contains chapters that amend other laws, which if you look at the discussion of revisions to a law takes a long time. Just look at how the process of revising the Criminal Code began in 1958 and was passed on January 2, 2023, through Law Number 1 of 2023 (Hukumonline.com, 2022).

Job Creation Law was born from the spirit of legal reform inseparable from the purpose of the law and the legal system surrounding it. That is, the purpose of the birth of the Job Creation Law must meet justice, certainty, and expediency. Examining job Creation Law from the perspective of the legal system, it can be seen from the substance of the articles in it. The substance of the law can be seen in its articles. Is it responsive or repressive?

In today's era of globalization, countries and governments are in a difficult position. Capital investment, especially from foreigners, is indispensable for economic

growth and development. However, the impact is that this capital investment is always accompanied by certain conditions. For example, the guarantee of low wages, the provision of quotas for foreign workers, to interference with political and economic policies in a country. This can be seen in the assistance from developed countries to developing countries, including Indonesia. For example, British government assistance to developing countries that are members of the Commonwealth, French assistance through the Franch Union organization, Dutch royal assistance to Indonesia through the International Government Group of Indonesia (IGGI), and United States assistance to Middle Eastern countries (Israel, Egypt, Jordan, Turkey), as well as Afghanistan, Pakistan, India, and South Korea. This assistance is not solely intended for economic development. However, it is more politically nuanced as a way to pressure developing countries to continue to follow the policies of developed countries (Sood, 2011).

From the previous discussion, it can be concluded that the Job Creation Law is indeed full of polemics and is allegedly a pro-foreign legal product. One of the reinforcements of signals that the pro-foreign Job Creation Law is the clash between foreign workers and local workers that occurred at PT Gunbuster Nickel Industri (PT GNI), North Morowali, Central Sulawesi on January 14, 2023. Two workers were killed in the riots, namely XE (30) a foreign worker (TKA) from China and MS (19) a migrant worker from Parepare. Political Sociologist of the State University of Jakarta (UNJ) Ubedilah Badrun assessed sociologically, that the clashes that occurred in Morowali were an accumulation of disappointment of native Indonesian workers with their rights and government concessions towards foreign workers (Pop/tsa, 2023). According to, the Ministry of Manpower (Kemenaker), the number of foreign workers throughout Indonesia in 2022 is 70,571 people (Data in

October 2022). Nearly 38,000 of them are from China. Chinese foreign workers themselves are recorded to work the most in Morowali.

The Morowali incident must be taken seriously by the government. Signals of social jealousy strengthened when local workers felt the government was giving some leeway to foreign workers. Article 81 of the Job Creation Law regulates changes to several articles in Law Number 13 of 2003 concerning Manpower, one of which amends Article 42 paragraph 4 of the Manpower Law "Foreign Workers can be employed in Indonesia only in Employment Relations for certain positions and certain times and have competence by the position to be occupied".

In the formulation of the article, foreign workers working in Indonesia must have certain competency and expertise requirements according to the field of work they will undergo, not as labourers or manual labourers in such positions should be filled by local workers who are still lacking in skills. It is expected that with the presence of foreign workers, there will be a transfer of expertise to local workers. However, the reality is that there are still many labourers or manual labour filled by foreign workers. As stated by the Ombudsman the majority of Chinese foreign workers become manual labourers (SAH, 2018). Not to mention, there is a fact on the ground that many foreign workers do not have valid immigration documents. For example, the visa permit function is not by the designation. For example, a tourist visa is used for a work visa (Fiah & Rini Irianti Sundari, 2023).

Based on forensic linguistic analysis utilizing semantics theory, it is known that in Article 42 paragraph 4 of the Job Creation Law, there is a use of words that contain ambiguous meanings that can cause legal uncertainty. Ambiguous words in the article, namely the words: can, only, certain

positions, and certain times (Ginting et al., 2020; Pisulińsk (Fiah & Rini Irianti Sundari, 2023; Dangwal and Alnuzaili, 2022).

The word *can* lexically mean 'able; able; can'. However, grammatically in the context of the article the Law has the meaning of 'not mandatory or not necessarily'. That is, it can be done and may not be done. Thus, the writing in the article makes it very possible to interpret that TKA is not a necessity to be accepted as labour in Indonesia. However, foreign workers have flocked to Indonesia since Indonesia entered as a member of the World Trade Organization (WTO) which is an international trade organization on January 1, 1995 (Ghufron, 2016).

Word only lexically it means 'free; only'. Grammatically, it has the meaning of 'nothing else'. This means that foreign workers in Indonesia may not work in Indonesia outside the position specified in the law. However, it turns out that many foreign workers are found working in Indonesia in positions that are not by the provisions of the Job Creation Law, for example as manual labourers (Primadhyta, 2018). The news is by the paper (Arsika, 2016) that foreign workers are considered too free to run their businesses and seize jobs that can be handled by local workers, which has long been complained about by various circles.

Phrases Certain job titles Lexically it means 'work (duty) in government or organization'. Grammatically, it means 'an important position related to work professionally. This means that foreign workers should have certain skills that are not yet possessed by the local workforce. It could also be that the TKA is needed for its presence in Indonesia because people with these skills are still limited in number in Indonesia. However, this is not the case because all fields of work that do not require certain skills are still filled by TKA

(Primadhyta, 2018). The news was in line with the paper by (Zainuddin et al., 2023) in the article which states Law Number 6 of 2023 concerning the Stipulation of Perpu Number 2 of 2022 concerning Job Creation into Law, that every employer, in this case, companies that employ foreign workers are required to appoint Indonesian workers as companions for foreign workers to accelerate the transfer of technology and transfer of expertise to Indonesian workers so that there is a transfer of knowledge such as government targets so that advanced knowledge and technology owned by foreign workers can be channelled and absorbed by Indonesian workers through the companion labour program.

Phrases *specific time* lexically it means 'the whole series of moments when a process, struggle, or state is or takes place'. Grammatically, it means 'limited or finite time'. This means that TKA in Indonesia has a time limit according to the provisions (number of days, months of the year and conditions that must be met to become a TKA in Indonesia). However, many foreign workers still live in Indonesia even though their stay permits have expired (Primadhyta, 2018). The news was in line with the paper by (Sari, 2023) Bring immigration intelligence needed to guard and supervise the entrance and exit of foreign workers so that the security of the entrance and exit of foreigners is controlled so that defence, sovereignty, and securing potential national problems within the jurisdiction of the Republic of Indonesia are safe and protected.

The legal ideal in amending the Manpower Law as stated in Chapter IV of the Manpower Job Creation Law is "To strengthen labour protection and improve the role and welfare of workers/workers in supporting the investment ecosystem". It is necessary to listen to the dictum of the formulation of Chapter IV, namely "in supporting the investment ecosystem". This shows that the interests of investors are the

main target of changes in the formulation of the Job Creation Law.

## Conclusions

Figure 1. The Relevance of the Job Creation Law

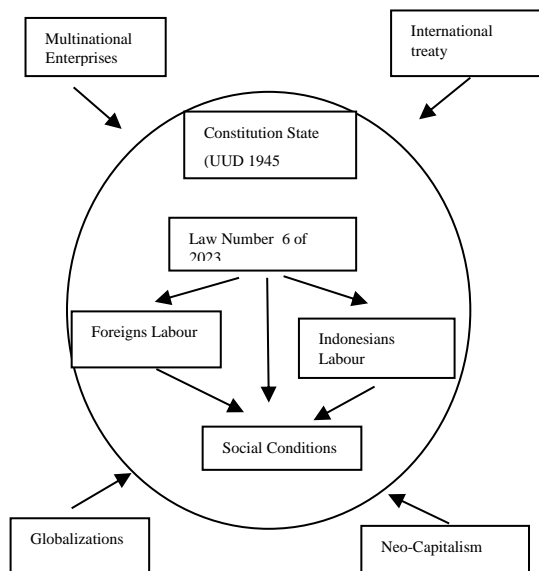


Figure 1 shows the correlation between the Job Creation Law as a derivative of the law that must refer to the 1945 Constitution. The Job Creation Law regulates local workers and foreign workers to create social conditions by the mandate of the 1945 Constitution. The Job Creation Law was formed due to the entry of foreign workers as workers in Indonesia. Foreign labour in Indonesia are affected by globalization, international treaties, neo-capitalism, and multinational corporations.

From the analysis of 1 article of the Job Creation Law, namely Article 42 (4), it was found that the writing of the article needs to be reviewed and corrected so as not to cause problems that deviate from what it should be so that the purpose of the formation of the Law by the government again directs it.

Thus, the use of language in the Job Creation Law has not explicitly stated that the law grants independence to local workers in Indonesia. The local workforce was hit by the heavy flow of foreign

workers. Foreign workers work in all fields of work, not with certain professional skills so that they can transfer knowledge and transfer technology.

Supposedly, the language in the Job Creation Law can convince the Indonesian people, that the state is here to protect Indonesian citizens as local workers. The alignment of the Job Creation Law to local workers must be explicitly shown in the form of rules, such as restrictions on foreign workers, such as field of employment, percentage of comparison between foreign workers and local workers, time limit of stay, and regulation of Indonesian language skills with a certain level as well as labour recruitment for Indonesian citizens as workers abroad. Language regulations need to be included so that there are no social clashes due to language barriers.

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