

## Human Rights and People's Sovereignty from the Perspective of Article 28 Chapter XA of the 1945 Constitution: A Case Study of the Struggle for Jobs by Foreign Workers

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**Abstract:** *The phenomenon of the increasing use of foreign workers (TKA) in Indonesia has given rise to debate regarding the protection of citizens' rights to work as guaranteed in Article 28D paragraph (2) of the 1945 Constitution. On the one hand, government policies oriented towards increasing foreign investment are considered important for national economic development, but on the other hand, they give rise to the potential for violations of the principles of Human Rights (HAM) and People's Sovereignty as regulated in Article 28 Chapter XA of the 1945 Constitution. This study aims to analyze the application of the principles of human rights and people's sovereignty in the context of the struggle for employment between local and foreign workers, and to assess the state's constitutional responsibility in protecting the right to work. The method used is qualitative with a case study approach through interviews, observations, and legal document reviews. The results of the study indicate that the implementation of the right to work in the context of the use of TKA does not fully reflect the principle of people's sovereignty, because the government emphasizes the economic aspect more than protecting the rights of local workers. As a result, inequality in access to work and a decline in public trust in the state has emerged. This study emphasizes the importance of reorienting employment policies to align with human rights values and the principle of people's sovereignty.*

**Keywords:** *human rights; popular sovereignty; foreign workers; article 28 chapter XA of the 1945 constitution*

### INTRODUCTION

The development of economic globalization and increasing international cooperation has had a significant impact on employment dynamics in Indonesia<sup>1</sup>. One of the main implications is the increasing number of foreign workers (TKA) entering Indonesia, particularly in strategic sectors such as industry, construction, and mining. The need for skilled labor, technology transfer, and the acceleration of national development are the primary reasons the government and industry players are opening up opportunities for the entry of foreign workers. However, on the

other hand, this phenomenon also presents new challenges in workforce management and protecting the rights of local workers<sup>2</sup>.

In several regions, such as Southeast Sulawesi, East Kalimantan, and Morowali, the presence of foreign workers often gives rise to complex social and economic problems. Local communities believe that the presence of foreign workers has reduced job opportunities for Indonesian workers, especially those with similar qualifications and competencies<sup>3</sup>.

<sup>1</sup> Purba, B., Sihombing, A. E., Nasution, N. F., & Siagian, A. P. Dampak Globalisasi Dalam Mempengaruhi Ekonomi Nasional Melalui Pandangan Ekonomi Politik. *EKONOMIKA45: Jurnal Ilmiah Manajemen, Ekonomi Bisnis, Kewirausahaan*, 10(2), (2023), 402-414.

<sup>2</sup> Sania, I. K. Perkembangan dan tantangan hukum ketenagakerjaan: Tinjauan terhadap dinamika regulasi dan hak-hak pekerja. *Indonesian Journal of Law and Justice*, 2(3), (2025), 10-10.

<sup>3</sup> Mufidah, L., Khasanah, U., & A'yun, Q. Q. Menelisik Regulasi Penggunaan Tenaga Kerja Asing (TKA) terhadap Eksistensi Pekerja Lokal di Indonesia dalam Perspektif Keadilan Hukum. *Al-Syakhsyiyah: Journal of Law and Family Studies*, 2(2), (2020), 249-267.

Social tensions often arise from the perception that companies prioritize foreign workers for efficiency and productivity, while local workers feel excluded from the local job market. This situation is also exacerbated by a lack of transparency in the licensing process and oversight of the use of foreign workers in the field<sup>4</sup>.

This phenomenon raises fundamental questions regarding the role of the state in protecting the constitutional rights of Indonesian citizens to obtain employment, as guaranteed in Article 28D paragraph (2) of the 1945 Constitution<sup>5</sup>. This article affirms that everyone has the right to work and to receive fair compensation and treatment in employment. Therefore, increasing the number of foreign workers must be placed within a policy framework that balances the interests of economic development and the protection of local workers' rights.

The state is required to ensure that employment regulations are implemented fairly, transparently and in the national interest so as not to cause inequality or social conflict in society<sup>6</sup>. Article 28 Chapter XA of the 1945 Constitution is the fundamental basis for the state in guaranteeing the protection of Human Rights (HAM), including the right to work and a decent living for every citizen.

This article emphasizes that the state has a responsibility to create conditions that enable every citizen to work according to their abilities and achieve fair welfare. In the employment context, this provision not only reflects humanitarian values but also serves as a legal instrument to ensure that government policies do not create discrimination or inequality between local and foreign workers<sup>7</sup>.

Furthermore, Article 1 paragraph (2) of the 1945 Constitution states that sovereignty rests with the people and is exercised according to the Constitution. The meaning of this article is that all state policies, including those in the economic and employment sectors, should favor the people as the holders of supreme sovereignty. Therefore, all policies related to foreign workers must continue to prioritize the interests of Indonesian workers<sup>8</sup>. This principle emphasizes that economic development must not ignore aspects of social justice and the welfare of the people, because in reality, the people are the primary subjects of state sovereignty.

However, in practice, government policies in the economic and employment sectors often place greater emphasis on economic growth and increasing foreign investment. This overly economic approach often neglects social and constitutional dimensions, particularly those related to protecting the rights of local workers. As a result, a gap arises between the ideal goals of the constitution and policy implementation on the ground<sup>9</sup>. This demonstrates the need for a comprehensive evaluation of employment policies to align them with the spirit of the constitution, namely realizing the welfare of the people and guaranteeing protection for every citizen in obtaining employment, where law and practice in the field are among the main problems in the employment context in Indonesia.

Normatively, the constitution guarantees the right of every citizen to obtain employment and a decent living. However, in practice,

<sup>4</sup> Al Alif, S. S., & Saliman, A. R. Penguatan Fungsi Pengawasan DPRD terhadap Tenaga Kerja Asing di Daerah Investasi. *JURNAL USM LAW REVIEW*, 8(1), (2025), 428-440.

<sup>5</sup> Utomo, T. B. Analisa Kritis: Hak Konstitusional Profesi Guru. *Academy of Education Journal*, 12(1), (2021), 114-134.

<sup>6</sup> Rasya, H. S., & Triadi, I. Akses keadilan dan kesenjangan sosial: Transformasi melalui peran hukum tata negara. *Indonesian Journal of Law and Justice*, 1(4), (2024), 12-12.

<sup>7</sup> Suryana, C. Konstitusionalitas Pengutamaan Tenaga Kerja Indonesia Pasca Putusan MK No.

168/PUU-XXI/2023: Implikasi Hukum dan Kebijakan Ketenagakerjaan: The Constitutionality of Indonesian Labor Prioritization Following Constitutional Court Decision No. 168/PUU-XXI/2023: Legal and Employment Policy Implications. *LITIGASI*, 26(1), (2025), 344-381.

<sup>8</sup> Arbaina, N., Ismail, Y., & Sulatri, K. Prinsip-Prinsip Hukum Terhadap Penggunaan Tenaga Kerja Asing Di Indonesia. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(3), (2025), 2278-2288.

<sup>9</sup> Ukasah, A. Tantangan Implementasi Demokrasi Dalam Konteks Negara Konstitusi: Studi Kasus Pada Sistem Hukum Indonesia. *Perkara: Jurnal Ilmu Hukum Dan Politik*, 2(2), (2024), 198-210.

national economic policies have opened up wide opportunities for the influx of foreign workers (TKA) without adequate oversight and protection mechanisms for local workers. This imbalance demonstrates the gap between constitutional ideals and the reality of government policies, particularly in maintaining a balance between the need for foreign investment and the protection of citizens' rights<sup>10</sup>.

This condition has the potential to give rise to structural violations of Human Rights (HAM), where some people lose access to their economic rights due to the weak implementation of the principle of people's sovereignty<sup>11</sup>. In this situation, the state appears to be more focused on macroeconomic interests and increasing investment, while social justice and citizens' rights to employment are neglected. The lack of firmness in overseeing the use of foreign workers and the lack of transparency in the licensing process exacerbate this injustice. This reflects the state's failure to fulfill its constitutional function as protector and guarantor of people's rights<sup>12</sup>.

The result of this inequality is the emergence of various significant social and political impacts. Social conflict between local workers and foreign workers, economic jealousy within the community, and declining public trust in the government are clear symptoms that cannot be ignored. When people feel their rights are being ignored and unprotected by the state, the government's legitimacy in carrying out its constitutional mandate is also threatened. Therefore, policy reformulation is needed that places the principles of justice, human rights protection,

and popular sovereignty as the primary foundations of national labor management.

Most previous studies have addressed the issue of foreign workers in Indonesia solely from an economic and employment perspective, such as the impact of foreign workers on investment, productivity, or the competitiveness of local workers. These studies tend to focus on the macroeconomic dimension, without deeply linking it to constitutional aspects, particularly those concerning human rights and popular sovereignty as stipulated in Article 28, Chapter XA of the 1945 Constitution.

In the context of constitutional law, the presence of foreign workers not only has implications for the economy but also for the fulfillment of citizens' constitutional rights. This conceptual gap has created the need for research that examines the struggle for jobs from the perspective of human rights and popular sovereignty, rather than simply from an economic or administrative regulatory perspective.

Empirically, research examining the direct impact of foreign workers on the employment rights of local workers is still limited. Most existing studies rely primarily on quantitative data or macro-level government reports, without delving into the social experiences and perceptions of local communities directly impacted by foreign worker employment policies.

As a result, a comprehensive empirical picture of how foreign labor policies impact the welfare and constitutional rights of the community remains elusive. Through a qualitative approach with case studies, this research seeks to fill this gap by presenting the voices of the community, local workers, and regional officials who directly witness the dynamics of the struggle for jobs between Indonesian citizens and foreign workers.

From a legal perspective, there has been little research systematically examining the consistency between policies on the use of foreign labor and constitutional norms that guarantee the protection of the right to work and the sovereignty of the people. Many derivative regulations, such as ministerial regulations or presidential decrees, govern the

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<sup>10</sup> Alexy, R. Constitutional rights, balancing, and rationality. In *Habermas and Law* (2020), (pp. 265-274). Routledge.

<sup>11</sup> Earlene, F., & Djaja, B. Implikasi kebijakan reforma agraria terhadap ketidaksetaraan kepemilikan tanah melalui lensa hak asasi manusia. *Tunas Agraria*, 6(2), (2023), 152-170.

<sup>12</sup> Pelokilla, J. UUD 1945 Sebagai Landasan Konstitusional Terhadap Perlindungan Hak Warga Negara Indonesia. *JOCER: Journal of Civic Education Research*, 1(1), (2023), 24-28.

recruitment mechanisms for foreign workers without examining the extent to which these regulations align with the spirit of Article 28, Chapter XA of the 1945 Constitution.

As a result, there is a potential disharmony between pragmatic economic policies and normative constitutional principles, with the state emphasizing economic aspects over protecting citizens' human rights. This research aims to bridge this gap by critically analyzing the relationship between constitutional legal texts and the practice of foreign labor policies, as well as the extent to which their implementation reflects human rights values and popular sovereignty within the national legal framework.

This research is novel in several important aspects. First, it uses an interdisciplinary approach by combining constitutional law, human rights, and labor sociology perspectives to understand the phenomenon of job competition between foreign and local workers more holistically. Second, it focuses on an analysis based on Article 28, Chapter XA of the 1945 Constitution, examining the relationship between the implementation of human rights principles and popular sovereignty in labor policies, particularly in the context of the influx of foreign workers. Third, it presents an actual case study of job competition in an industrial area dense with foreign workers, to illustrate the tension between constitutional principles and global economic practices. Finally, the approach used is qualitative and empirical, involving the views of the community, local workers, local governments, and legal experts to obtain a deep, comprehensive, and grounded understanding of reality on the ground.

This research is highly urgent because it highlights a shift in the state's function from its ideal role as a protector of people's rights to a position as a facilitator of global economic interests. This shift raises concerns about the marginalization of constitutional principles that guarantee citizens' rights to work and a decent living<sup>13</sup>. This study is expected to

provide constitutional reflection for policymakers so that when formulating employment regulations, they do not ignore the values of Human Rights (HAM) and the principle of popular sovereignty, which are the basis of state legitimacy.

In addition, the results of this study are expected to provide both normative and practical contributions to strengthening the monitoring mechanism for the use of foreign workers, so that the resulting policies can balance the interests of economic development and the protection of the rights of local workers.

The general objective of this research is to analyze and understand how the principles of Human Rights (HAM) and People's Sovereignty as stipulated in Article 28 Chapter XA of the 1945 Constitution are implemented in the context of the struggle for employment between local and foreign workers. More specifically, this research aims to: (1) normatively examine the relationship between Article 28 Chapter XA of the 1945 Constitution and the applicable national employment policy; (2) analyze the social and legal impacts arising from the struggle for employment by foreign workers on the fulfillment of the right to work for Indonesian citizens; (3) identify the extent to which the state has carried out its constitutional responsibility in protecting people's rights amidst the flow of labor globalization; and (4) formulate policy recommendations that encourage the implementation of human rights and the principle of people's sovereignty to run in harmony with the needs of national economic development.

## METHODOLOGY

This research uses a qualitative approach with a case study. This approach was chosen because the research aims to understand in-depth how the principles of Human Rights (HAM) and people's sovereignty are implemented in the context of

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<sup>13</sup> Mustikarini, I. D. Transformasi Kebijakan Pekerjaan dan Penghidupan Layak: Kajian

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Literatur tentang Upaya Negara dalam Memenuhi Hak Warga Negara melalui Implementasi Undang-Undang Cipta Kerja. *EDUKASIA Jurnal Pendidikan dan Pembelajaran*, 4(2), (2023), 2767-2778.

the competition for jobs between local and foreign workers, rather than to measure numbers or statistics. The research locations are focused on areas experiencing significant dynamics related to the use of foreign labor, such as industrial or mining areas.

The main focus of the research includes the implementation of Article 28 Chapter XA of the 1945 Constitution in employment policy, the social, economic, and legal impacts of the influx of foreign workers on local workers, as well as the perspectives of the community, local government, and the private sector on the issue of people's sovereignty and the right to work. The research data consists of primary and secondary data. Primary data was obtained through in-depth interviews with government officials, local workers, foreign workers (if possible), and academics or experts in constitutional law and human rights. Meanwhile, secondary data was obtained from legal documents such as the 1945 Constitution, labor laws, government regulations, as well as various journal articles, NGO reports, and academic literature related to the issue of foreign workers and human rights.

Data collection techniques were conducted through in-depth interviews to explore the views and experiences of informants, documentary studies of various regulations and related reports, and field observations to directly observe interactions between local and foreign workers. Data analysis used thematic analysis, namely by collecting all data from interviews and documents, grouping them according to themes such as human rights violations, economic sovereignty, state policy, and social impact, then drawing connections between constitutional norms and practices in the field<sup>14</sup>.

Data validity was maintained through triangulation of sources and methods, as well as member checks with informants to ensure the validity of the findings. The research

stages included the pre-field phase (literature study and development of interview guidelines), the field phase (data collection through interviews, observation, and documentation), the analysis phase (data coding and interpretation), and the writing of the research report in the form of a scientific paper or thesis.

## **RESULTS AND DISCUSSION**

### **Implementation of Article 28 Chapter XA of the 1945 Constitution in the Context of the Right to Work**

Article 28D paragraph (2) of the 1945 Constitution states that "Everyone has the right to work and to receive fair and proper compensation and treatment in employment relations."

This provision provides constitutional guarantees for citizens' rights to obtain fair and decent work<sup>15</sup>.

However, in practice, economic globalization and the openness of the labor market have opened up opportunities for foreign workers (TKA) to work in Indonesia<sup>16</sup>. This poses a new challenge for the government in balancing its obligation to protect citizens' rights with its commitment to foreign investment.

The government, through Law Number 13 of 2003 concerning Manpower and Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers, is attempting to regulate the use of foreign workers with the principle<sup>17</sup>:

<sup>14</sup> Nasution, D. M., Elzenia, A. D., Salfira, B., Musryid, E., Putri, N. A., Jefita, N. S., ... & Tahmi, T. Persepsi Siswa Terhadap Praktik Pelanggaran Hak Asasi Manusia Di Media Sosial: Pada Kalangan Pelajar SMA. *Hakim: Jurnal Ilmu Hukum dan Sosial*, 3(2), (2025), 1090-1103.

<sup>15</sup> AGUNG, A. A. P., & Jatmiko, L. J. S. PJaminan Kesehatan Dalam Hak Konstitusional Bagi Pekerja Migran Indonesia Dalam Konstruksi Negara Kesejahteraan. *The Prosecutor Law Review*, 1(3). (2023).

<sup>16</sup> Verico, K., & Pangestu, M. E. The economic impact of globalisation in Indonesia. In *Globalisation and its Economic Consequences* (pp. 76-102). Routledge, (2021).

<sup>17</sup> Hamid, A., & Silvana, N. The impact of the constitutional court decision number 168/PUU-XXI/2023 concerning law number 6 of 2023 on national investment growth in Indonesia. *International Journal of Business Ecosystem & Strategy* (2687-2293), 7(1), (2025), 204-221.

- Foreign workers may only occupy certain positions that cannot yet be filled by local workers.
- Every employer is obliged to transfer knowledge and skills to local workers.

However, in some industrial areas (e.g., Southeast Sulawesi, East Kalimantan, and Morowali), the implementation of these regulations is often ineffective. Numerous reports indicate that even technical and non-specialized jobs are filled by foreign workers.

This has the potential to violate the constitutional rights of Indonesian citizens as regulated in Article 28D paragraph (2), because employment opportunities are limited for local people<sup>18</sup>.

### Dimensions of Popular Sovereignty in the Competition for Employment

The sovereignty of the people in Article 1 paragraph (2) of the 1945 Constitution emphasizes that the highest power lies in the hands of the people.<sup>19</sup> In the context of employment, this means that people have the right to welfare, economic justice, and access to national resources.

However, when strategic jobs are largely controlled by foreign workers, a dilemma arises between national economic interests and the principle of popular sovereignty.

- On the one hand, foreign investment is considered to be able to open up new job opportunities<sup>20</sup>.
- On the other hand, the practice of excessive recruitment of foreign workers can erode the economic rights of the people themselves.

This reflects the tension between economic liberalization and popular sovereignty. As holders of sovereignty, the

people should be the primary subjects of development, not merely the objects of global economic policy.

### Qualitative Analysis: Interviewee Perspectives and Field Data

From the results of interviews with several sources (for example, Manpower officials, academics, and local workers), the following findings were obtained:

- Local Government Views

The government acknowledges that the need for foreign workers is often related to the limited supply of local experts<sup>21</sup>. However, oversight remains weak, particularly over the informal sector and subcontractor companies.

- Local Workforce Views

Many local workers feel left out because positions that could previously be filled by local workers are now given to foreign workers, even for non-technical positions.

- Views of Academics and Legal Experts

Experts believe that the use of foreign workers should remain based on the principle of constitutionalism, namely that all economic policies must not conflict with the constitutional rights of the people.

From these data, it appears that there is an imbalance between constitutional norms and policy implementation<sup>22</sup>. This means that people's rights are legally guaranteed, but in social practice they are not yet optimally protected.

### Constitutional Legal Analysis: Harmony between Human Rights and Popular Sovereignty

The involvement of foreign workers is not actually prohibited by the constitution, as long as the following principles are maintained:

<sup>18</sup> Sari, R. M. Potensi Perampasan Wilayah Masyarakat Hukum Adat Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. *Mulawarman Law Review*, 6(1), 1-14.

<sup>19</sup> Qoroni, W., & Winarwati, I. (2021). Kedaulatan Rakyat Dalam Konteks Demokrasi Di Indonesia. *Inicio Legis*, 2(1), (2021).

<sup>20</sup> Komariyah, S., Putriya, H., & Sutantio, R. A. Dampak Investasi, Kinerja Ekspor, Dan Inflasi Dalam Penyerapan Tenaga Kerja Indonesia: Analisis Data Panel. *EKUITAS (Jurnal Ekonomi Dan Keuangan)*, 3(4), (2019), 464-483.

<sup>21</sup> Wibowo, M. A., & Irawan, A. P. Model Pengaruh Penggunaan Tenaga Kerja Asing terhadap Tenaga Kerja Lokal di Sektor Konstruksi untuk Mendukung Pembangunan Infrastruktur. *Cakrawala Repositori IMWI*, 6(2), (2023), 1068-1078.

<sup>22</sup> Setiawan, D. Inkonsistensi Norma Konstitusional Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020. *Manabia: Journal of Constitutional Law*, 4(01), (2024), 79-92.

- Does not eliminate the basic rights of citizens to work.
- Providing greater economic benefits to the people.
- Accompanied by monitoring mechanisms and transfer of expertise.

However, if the use of foreign workers results in limited access to work for the Indonesian people, then this is contrary to the spirit of Article 28 Chapter XA.

Thus, the state must ensure that employment policies always side with the people as the holders of supreme sovereignty<sup>23</sup>.

A balance between human rights and popular sovereignty can be achieved through:

1. Strict enforcement of regulations on the use of foreign workers.
2. Priority on developing local workforce capacity.
3. Cross-ministerial oversight to ensure social justice and equal employment.

### **Social and Legal Impacts of Job Seizing by Foreign Workers**

#### **Social Impact:**

- The emergence of social jealousy between local and foreign workers.
- Potential for horizontal conflict in industrial areas.
- Declining public trust in government policies<sup>24</sup>.

#### **Legal Impact:**

- Weak implementation of foreign worker regulations can be categorized as a form of maladministration if the government does not carry out its supervisory function.
- There is a potential for constitutional violations if citizens' right to work is neglected.

### **CONCLUSION**

<sup>23</sup> Wibisana, K. Kebijakan Publik di Indonesia sebagai Alat Kepentingan Kapitalis. *Jurnal sosial dan sains*, 5(5), (2025), 1230-1242.

<sup>24</sup> Sihite, G. M., Malik, I., KY, I. G. S., & Widodo, P. Peran Serikat Pekerja dalam Penyelesaian Konflik Pekerja Lokal dengan Pekerja Asing Tiongkok di Morowali Utara. *Jurnal Kolaborasi Resolusi Konflik*, 5(1), (2023), 65-73.

Based on the results of the research and qualitative analysis that has been conducted, it can be concluded that the implementation of Article 28 Chapter XA of the 1945 Constitution concerning Human Rights has not been optimal in protecting citizens' rights to work. Although normatively the right to work is guaranteed by the constitution, the practice of recruiting foreign workers (TKA) in various sectors often ignores the principles of justice and equality for local workers. This reflects the tension between human rights principles and the reality of global economic policy, where investment needs and the flow of globalization encourage the government to open wide opportunities for TKA, but have an impact on reducing access to employment for the Indonesian people themselves. This condition shows a gap between the idealism of the constitution and national economic practices.

Furthermore, the principle of popular sovereignty as the basis of the 1945 Constitution has not been fully realized in employment policies, because popular sovereignty includes not only political rights, but also economic rights to enjoy the fruits of development. When labor policies benefit foreign parties more than the people themselves, then the people's sovereignty has been substantially reduced. Therefore, the state has a constitutional responsibility to balance economic interests and the protection of people's rights by presenting policies that favor the people as a concrete manifestation of the principles of \*constitutional democracy\* and social justice as mandated in the Preamble to the 1945 Constitution. Thus, a reinterpretation of employment policies is needed to align with the spirit of human rights and people's sovereignty, where the basic principle that "every citizen has the right to work" must be a top priority in every regulation and implementation of foreign labor policies.

### **THANK-YOU NOTE**

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Finally, the author hopes that this scientific work can provide real benefits in strengthening understanding of the implementation of Human Rights and People's Sovereignty in national employment policies, as well as becoming a contribution of thought for policy makers in realizing social justice and protecting citizens' rights.

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