



ISSN Print: 2541-5298
ISSN Online: 2541-6464

SRIWIJAYA Law Review

Editorial Office: Faculty of Law, Sriwijaya University
Jalan Srijaya Negara, Palembang, South Sumatra 30139, Indonesia.
Phone: +62711-580063 Fax: +62711-581179
E-mail: sriwijalayawreview@unsri.ac.id| sriwijalayawreview@gmail.com
Website: <http://journal.fh.unsri.ac.id/index.php/sriwijalayawreview>

Indonesia's Contra-Productive Regulation against the Rights of Unskilled Workers for Balinese in New Zealand

Desak Putu Dewi Kasih^{a*}, Ida Bagus Wyasa Putra^a, Lukas Banu^a, Ida Bagus Erwin Ranawijaya^a, and Ida Bagus Aswin Pranawa Sidhi^a

^{a*} Faculty of Law, Universitas Udayana, Indonesia. Corresponding author Desak Putu Dewi Kasih, e-mail: dewi_kasih@unud.ac.id

Article	Abstract
<p>Keywords: Balinese workers; Contra-Productive Regulation; Rights for workers; Seasonal Workers.</p> <p>Article History: Received: Aug 24, 2022; Reviewed: Dec 21, 2022; Accepted: Jan 28, 2023; Published: Jan 31, 2023.</p> <p>DOI: 10.28946/slrev.Vol7.Iss1.2119_pp135-149</p>	<p>New Zealand relies heavily on its agricultural industry. There are over 4,150 cultivators in the horticultural sector. They require the cooperation of foreign workers. Some of them were recruited from Indonesia, where most of the labour force is poor and unskilled. This research is conducted to analyse the compatibility of legislation and policy in Indonesia and New Zealand. So, they may enjoy their rights and possibilities for choosing, acquiring, or migrating from one work to another and earning a fair salary, whether domestically or internationally. Based on the contextual law method, it has been concluded that New Zealand's laws provide excellent regulations for such enjoyment. Regarding the equal enjoyment of their fundamental employment rights, Indonesian Law and policy have failed to meet the needs of employees. This article demonstrates the Indonesian and New Zealand legal systems' capacity and the need for Indonesian Law to be reconstructed to fulfil workers' demands.</p>

©2023; This is an Open Access Research distributed under the term of the Creative Commons Attribution-ShareAlike 4.0 International License (<https://creativecommons.org/licenses/by-sa/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original works are properly cited.

INTRODUCTION

Article 27, paragraph 2 of the Indonesian Act Number 13 of 2003 concerning Workforce (hereinafter Act on Workforce 2003 or the Act) set forth that each Indonesian citizen owes the right to job opportunities and well-being in terms of humanity. This article has been reconfirmed repeatedly under Article 4, Article 5, Article 27, Article 31, and Article 32 of the Act. Article 4 stipulates that the development of the Indonesian labour force shall have the following objectives: to empower workers, to realise equal opportunity for workers, and to provide adequate protection for workers and their welfare, including their families. Article 5 reaffirms that every worker must have equal employment opportunities and be protected from discrimination. Article 31 stipulates that each worker has the right and opportunity to choose, obtain, or change jobs while earning a reasonable wage, whether domestically or internationally. Article 32 consists of three paragraphs that stipulate: (1) the placement of a

worker is based on open, free, objective, just, and nondiscriminatory principles; (2) the placement of a worker must be competency-based, and following the worker's skill, talent, passion, and capacity, with particular regard for human dignity, human rights, and legal protection; and (3) the placement of a worker must be based on equal opportunity and the need of the user.

The above rule relies fully on human rights, dignity, and justice. It relates particularly to the second generation of human rights, the social economy, and cultural rights.¹ However, Indonesian Regulation Number 4 of 2013 concerning the Placement of Indonesian Overseas Workers (hereinafter Regulation on Placement of Workers 2013) in contrary has drawn up some contra-productive requirements against unskilled and poor workers, such as the requirement for formal education certificates (Article 11 paragraph c), competency test (Article 14 paragraph 1) including English ability, and various kind of health checkup which equal to a huge amount of cost.² These rules have been applied uniformly to all Indonesian seasonal workers working abroad, regardless of the specific requirements and expectations of each available position.³ Indonesian workers in New Zealand have criticised the above unfriendly rules, particularly unskilled and poor workers because the jobs they are applying for do not require formal education, competency, or English proficiency. Therefore, they must comply and spend substantial money on tests and inspections that are completely unnecessary for the company's customers. Article 31 of the Act stipulates that workers have the right and opportunity to choose, obtain, or switch jobs and earn a reasonable wage. However, how these rules have been implemented has conflicted with this provision. In light of and in accordance with the context's expectations, these rules must be revised to become more equitable, instead of requirements mandated by the Constitution of the Republic of Indonesia 1945 and the Indonesian Presidential Regulation Number 59 of 2017 concerning the Implementation of the Sustainable Development Goals Achievement which requires the government to ensure the fulfilment of rights of workers, including the poor and unskilled worker, to job and salary.

New Zealand's economy is primarily supported by agriculture. Consequently, agriculture is the major economic sector in New Zealand. It produced NZD\$10 billion in June 2020, with a total export of NZD\$6.6 billion in 2020 and NZD\$450 million in 2019. The biggest horticulture export is kiwifruit at NZD\$2.5 billion, followed by wine at NZD\$1.9, apples at NZD\$876 million, and onion at NZD\$148 million. Exported into five main markets destinations, i.e., Europe, Australia, USA, China, and Japan, accounted for NZD\$4.5 billion and 68% of the total exports.⁴ New Zealand also cultivates fruit-bearing plants: stone fruit, peaches, nectarines, plums, apricots, cherries, pears, stone fruits, grapes, citrus, blackcurrants, and berries. In addition to fruits, New Zealand cultivates a variety of vegetables, including, among others, onions and squash, potatoes and sweet corn, legumes, and tubers. It utilises approximately

¹ Council of Europe The evolution of human rights, "These Rights Ensure People to Enjoy Equality and Guaranteed Access to Essential Social and Economic Goods, Services, and Opportunities," n.d.

² John Gibson and Rochelle-Lee Bailey, "Seasonal Labor Mobility in the Pacific: Past Impacts, Future Prospects," *Asian Development Review* 38, no. 1 (2021): 1–31, https://doi.org/10.1162/adev_a_00156.

³ P.W Brouwer, *Coherence and Conflict in Law* (Boston: Kluwer Law and Taxation Publishers Deventer, 1992).

⁴ Plant & Food Research, "New Zealand Horticulture Exports Resilient in the Year of the COVID-19 Pandemic," 2021.

105,000 hectares of land throughout New Zealand, primarily in Hawke's Bay, Otago, Tasman, Waikato, Canterbury, Bay of Plenty, Marlborough, Gisborne, Northland, and Auckland, and employs approximately 4,150 grower companies and 60,000 workers.⁵

Most fruit growers recruited overseas workers, particularly for picker jobs.⁶ Most portion of the workers in Otago are recruited from Indonesia.⁷ In terms of education and English proficiency, they are low-skilled and poorly educated, but they derive strength from good behaviour, dedication, and discipline. Therefore, their opportunity is quite open to other competitors. Agencies facilitated their visit to New Zealand for transfer workers and were largely supported by a standard binding agreement system containing potential risk for the parties because bargaining is not a component of the system; most contracts are standard contracts. Their position as workers in need of a job and income, including a fictitious large salary, may cause them to disregard their bargaining rights to protect their rights. In reality, the contract is primarily standard in which the worker's rights are not negotiable. In addition, there is evidence that the Indonesian government has adopted a contra-productive policy regarding overseas seasonal workers, as they applied the policy without regard for the nature of the poor and unskilled workers and the nature of the jobs offered by the companies. The government has equally applied the general requirements to skilled and unskilled workers, workers with high and low economic capacity, and jobs requiring a high and low skill level, respectively. This method of enforcing the rule has made it easier for poor, unskilled seasonal workers to meet these requirements.⁸ On the other hand, New Zealand's domestic policy restricts the placement of foreign seasonal workers to a maximum of 25 (twenty-five) per company.⁹ These facts are contrary to the needs of most growers companies in New Zealand which have a high demand for Indonesian poor and unskilled seasonal workers, which is closely related to three reasons, i.e., *firstly*, compatibility of the level of behaviour, commitment, and discipline of the workers which meets the expectation and needs of the company; *secondly*, the company compatibility and capacity to pay salary which is directly related to the sustainability of the company; and *thirdly*, the productivity of the company and willingness to share a higher contribution to the state GDP.

The above facts of the Indonesian and New Zealand regulation context indicated that: (a) the generalisation of the implementation of the principle of equality and non-discrimination under Article 4, Article 5, Article 27, and Article 32 of the Indonesian Act on Workforce 2003 has caused sufferings and prevention to the poor and unskilled workers in actualising their rights and opportunity for choosing, getting, or moving from one to the other job and earning a

⁵ Horticulture, "Jobs and Labor," n.d.

⁶ Cambridge Dictionary, "Picker Is a Person Whose Job Is to Remove Fruit, Cotton, Etc. from a Tree or Plant When It Is Ready," n.d.

⁷ Kemlu, "There Are Some 115 Indonesian Overseas Workers from Tulungagung East Java Had Been Accepted for Working in Hasting Growers Company New Zealand. Some 49 of Them Had Arrived in January 2007 and the Rest Some 66 Persons Has Arrived on 4th and 22nd February 20," n.d.

⁸ Anne Levade, "Positive Discrimination and the Principle of Equality in French Law," *Pouvoirs* 111, no. 4 (2004): 55–71, <https://doi.org/10.3917/pouv.111.0055>.

⁹ Ida Bagus Wyasa Putra, "Final Report Udayana Research Grant, Legal Protection Scheme Capacity in Public Private Legal Instrument in the Providing of Legal Protection for Indonesian Seasonal Worker in New Zealand" (Jimbaran, 2017).

rational salary, domestically or internationally as ruled in Article 31; (b) the New Zealand domestic policy which set a limitation to the foreign overseas seasonal worker for maximum 25 (twenty-five) worker for each company also has contrary to its contextual expectation where the grower companies have a high demand to such kind of workers, instead of their capacity for paying salary and their contribution to the GDP. Therefore, these contextual issues need to be settled properly to maximise the fulfilment of the policy contextual expectation and the impact of the policy: *for Indonesia*, in ensuring the fulfilment of the rights of the worker, particularly the poor and unskilled; and *for New Zealand*, for maximising the sustainable contribution of the business sector to the New Zealand national GDP.

Based on the above facts and issues identification, this research focused on promoting two issues, namely: (1) the nature of the context and the expectation of the Indonesian overseas seasonal worker and the New Zealand companies, including the nature of its problem and its needs for solving; and (2) the degree of conformity and the degree of absorption of the community expectation by the Law and the formulation of the rules to minimise the Indonesian and New Zealand workforce law context-content that are applicable to the Indonesian poor and unskilled overseas seasonal worker for maximising the law and policy impact on fulfilling the expectation and needs of its context, the rights of the worker and the sustainability of the company.

This study has two objectives: (1) to formulate the nature of the Indonesian and New Zealand law and policy context, including the nature of its problem and its need for resolution; and (2) to formulate the degree of conformity and absorption of community expectations by the Law, as well as the rules for resolving such issues. The result of this research would be fruitful for supporting Indonesian and New Zealand's needs for reformulating their policy: *for Indonesia* to preserve the rights of their people; and *for New Zealand* to provide a better business environment policy for grower companies.

RESEARCH METHODS

This research is policy-oriented law research, supported by a constructive and contextual-based approach. Under this approach, the Law is defined as a part of the continuous authoritative policy process where the Law is defined as the outcome of the policy.¹⁰¹¹ This method necessitates a real community expectation to measure (parameter) and evaluate a public policy's capability (urgency, conformance, compatibility, and efficacy). All public policy in a democratic state must rely on, respond to, and incorporate the community's expectations.¹² Community expectation is the needs of the community for whom the policy is set. Based on this approach, the research shall start by identifying the community's expectation, that is, *the existing* problem and needs of the community, and continue with the measurement of the degree of conformity and absorption of the policy to the community expectation. The primary

¹⁰ Myres S McDougal, "Law as a Process of Decision: A Policy-Oriented Approach to Legal Study," *Nat. LF* 1 (1956): 53.

¹¹ Lung-chu Chen, *An Introduction to Contemporary International Law: A Policy-Oriented Perspective* (Oxford University Press, 2014).

¹² Ann Seidman, Robert B Seidman, and Nalin Abeyesekere, *Legislative Drafting for Democratic Social Change* (Kluwer Law International BV, 2001).

aim of the policy research-oriented is to solve the contextual problem¹³¹⁴ through improving the Law, which respectless the community expectation, into a law that conforms to and absorbs the community expectation. Hence, the Law could perform its function and achieve its target properly.

Regarding such an approach, the research shall be conducted under two steps (see table 1), covering: (1) identifying the nature of context and the nature of the contextual problem of the policy; and (2) identifying the degree of conformation, absorption of the community expectation by the Law and identifying the formulation of policy or rules to satisfy the community expectation.¹⁵ The structure of the process of the research may be drawn up as follows:

Table 1: *The Structure of Subjects, Techniques of Analysis, Results, and Purposes of Research*

Steps	Object	Method	Result Expected	Purpose
Step 1	The nature of context includes its problem and the need to be solved.	Identification (+contextual analyses)	Formulation of the nature of context, including the nature of its problem and needs	Parameter for analysing the degree of absorption of needs of the community by the Law
Step 2	The degree of confirmation and absorption of the community expectation by the Law	Identification (+contextual analyses)	The formulation of the degree of absorption of community expectation by the Law	The formulation of the degree of absorption of the community expectation by the Law; and The proposed formulation of the rule for solving the problem of context

Description table 1: (1) Research Step 1: Identification of the nature of the context (the nature of the Indonesian seasonal workers and the character of the New Zealand grower enterprises), as well as the nature of the problem and the problem-solving requirements. It expects to generate a formulation of the nature of the context, including the nature of its problems and needs, which will serve as a criterion for judging the degree to which the legislation meets the demands of the community; (2) Research Step 2: Identification of the degree of responsiveness, conformance, and assimilation of the law/context policy's expectation. Expected to produce the articulation of the degree to which the Law absorbs societal expectation (the formulation of the degree of absorption of the community expectation by the Law and the proposed formulation of rule for solving the problem of context).

ANALYSIS AND DISCUSSION

The Nature of the Indonesian Poor and Unskilled Overseas Seasonal Worker

Twenty-four of the Balinese poor, unskilled overseas seasonal workers working in DMS Pukepack (twenty males and four females). DMS is a grower in the Tepuke North region of New Zealand. Most workers are married; thus, they have left their families in their home villages for a minimum of six months. All of them originated from Gitgit Village in Buleleng, northern Bali. They live in extremely poor social conditions. They do not have land for housing, do not have permanent jobs, their living conditions are far below standard, and they do

¹³ McDougal, "Law as a Process of Decision: A Policy-Oriented Approach to Legal Study."

¹⁴ Ronald St John Macdonald and Douglas Millar Johnston, *The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory*, vol. 6 (Martinus Nijhoff Publishers, 1983).

¹⁵ Ida Bagus Wyasa Putra, "Filsafat Ilmu: Filsafat Ilmu Hukum," *PT Raja Grafindo Perkasa, Jakarta*, 2015.

not have a stable income. They also need to gain education experience and can afford their basic needs, such as education for their children. In addition, they do not go to the hospital when they are sick, and they satisfy their hunger with whatever is naturally available around them that could be transfused. Despite this, they have a strong will to live. They anticipate earning a living wage from any work they can find.¹⁶

In reality, the majority of professions require minimal skill and education. Therefore, they missed any available employment opportunities. Their sole available occupation is farming. Since they do not own farmland, they must work for the landowner and accept whatever conditions he stipulates. This type of employment results in a meagre income that needs to be increased to meet their daily necessities. They expect the government to be able to offer them employment. In actuality, such an expectation does not arise. They had lived in such conditions from when they were born till they married and started a family. Several other residents of their village likewise faced the same intractable problem.

Their problem was settled soon after the appearance of the *Tangan Pertolongan Bali* Foundation (hereinafter, the TPB). TPB offered them a job in a company grower in New Zealand as a picker and fruit sorter. The job does not require a certain level of education or even English ability. The only requirements offered by the host company are a minimum level of intelligence, good behaviour, a high level of commitment and discipline, and mental health. They will get specific short-term training for the technical requirements, and for the communication problem, they will get a coordinator who can facilitate them in communicating in English.¹⁷

Preparation of immigration paperwork costs a minimum of 25 million IDR and other expenses for completing workforce standards, which were initially incurred by the Foundation and then recouped by the worker after receiving compensation. As the Foundation aims to alleviate poverty, the workers assert that it does not deduct a single cent from their wages. Instead, the Foundation assisted in every aspect of the placement process, including preparation for placement, fulfilling working permit requirements, immigration documents, transferring, ensuring their placement satisfies the standard working contract with the company, housing, food, transportation, health insurance, etc., these responsibilities are being positioned on the placement company. For the Foundation, this method of employment resulted in a lengthy, tough, and intricate debate with the public workforce institution in Indonesia, including the declaration of every scheme of guarantee for the worker's safety in advance. Consequently, the workers from Gitgit Village could be relocated to Tepuke, New Zealand.¹⁸

The Foundation and the worker anticipate that the government will enhance the regulation on overseas seasonal workers, develop a specific scheme of requirements for seasonal overseas workers following the actual nature and requirements of the job, and establish a special treatment concerning the cost of required documents for unskilled and poor workers.

¹⁶ Putra, "Final Report Udayana Research Grant, Legal Protection Scheme Capacity in Public Private Legal Instrument in the Providing of Legal Protection for Indonesian Seasonal Worker in New Zealand."

¹⁷ Putra.

¹⁸ Putra.

The DMS management testified that the Balinese worker is the best in terms of their behaviour, commitment, and discipline to carry out their job. They wish to recruit additional Bali-based workers to join the DMS in Tepuke. In contrast, the worker testified that DMS is a great firm with a strong commitment to work schedule, job volume, salary, payment of salary, housing, transportation from the worker's residence to the victory, safety worker standards, and health care. These institutions adhere to every government rule. The worker stated that they received a salary commensurate with their position, following the local minimum wage, and sufficient to recover their lives, cover the daily living expenses of their family in Bali, and even purchase land, construct a home, and start a small business in their village.

The Government of New Zealand has published Guidance on Minimum Employment Rights and Responsibilities by the Ministry of Business, Innovation, and Employment. This guidance sets *the minimum rights and responsibilities that law applies to employers and employees*.¹⁹ Under these guidelines, the New Zealand government defined the minimum substance of employment contracts between employers and employees, including seasonal workers from abroad. The contract's content must have at least three clauses, such as the Mandatory Clause, which must be included in all contracts; the Termination Clause, which must be included in all termination agreements; and the Arbitration Clause. Recommended Clause, a clause provided for employment relationships. Optional Clause, a provision useful in certain positions or industries but unnecessary in others. The contract is published on the company's website, and the employee can fill out the contact form online. The contract is entirely in English, which may be difficult for non-native English speakers to comprehend.²⁰

All these facts demonstrate that the community's expectation of the Indonesian poor and the unskilled foreign seasonal workers is that there is a specific type of employment fit for them that does not require a certain level of education or English proficiency. Therefore, the basic guideline governing such requirements must be modified following the nature of the offered position. In addition, since the workers are poor and unskilled, the requirements for document arrangement fees must be modified to reflect their true socioeconomic status.²¹

The Nature of the Working Environment

DMS and the Worker Living Standard as an Example

DMS Pukepack, or DMS, is a Growers company in Te Puke, New Zealand. It employs poor and low-skilled workers from Bali. The company provides a high-quality working environment, including cleanliness, safety, and comfort, following the New Zealand government's declared standard. Instead of a canteen, free food, drink, and cake are provided at the workplace in a sufficient room for the number of employees and the available space.

The entirety of the company's Balinese workers come from Gitgit, a traditional town in northern Bali. They have worked in New Zealand two times, each lasting six months, and have worked for two periods in most cases. They confirmed that they had complied with the New

¹⁹ Employment Agreement Builder, "Employment Agreements, Made Easy," n.d.

²⁰ Builder.

²¹ Philippe Nonet and Philip Selznick, "Law and Society in Transition: Toward Responsive Law (1978)," *Diterjemahkan Oleh Raisul Muttaqien, Cetakan 1* (1969).

Zealand legislation in all elements of their employment, including remuneration, working hours, working relationships, and all rights of workers protected by the New Zealand law. The organisation has responded professionally and treated them as a family, requiring them to report any worker failures immediately. The work is exhausting, but timely and complete compensation is a wonderful remedy for such fatigue. The organisation has effectively preserved the work ethic of its employees through fair and equitable treatment during working hours. They have access to all necessary living facilities, including housing and transportation to their place of employment. The salary paid covers the cost of housing, transportation, and other necessities.²²

House for the workers is quite good, clean, healthy, and full of conveniences. Male and female workers reside in different houses. One was offered for male workers and the other for female workers. The residence locates about 20-30 minutes from the company. All labourers are from Bali, with some 24 persons, twenty males and four females. All personnel have good personalities and demeanours. They live well and are healthy. They offer themselves healthy foods and drinks, healthy surroundings, and compatible time for a break, and the company safeguards their leisure rights. Some of them are new and have yet to experience working overseas. So, they naturally feel homesick. However, they encouraged each other and realised that having jobs is the only worry their present in various countries. Hence, psychological assistance is a common need for workers and medicine for their daily living.²³

The Salary Standard

The workers receive a salary of NZ \$ 13/hour according to their position level in the company. Seven workers have a position at a supervisor level with a salary of NZ \$ 16/hour. They work an average of 10 hours per day and six days per week. Hence, their average monthly earnings are equal to IDR 30,000,000 (thirty million Indonesian currency) per month, equal to a second-level manager's monthly salary in Indonesia, if not even more. One session of their work is six months. So, they shall at least earn an income of IDR 180 million. According to the worker, they received net income after housing expenses, transportation, and living costs. No one is cutting their salary, including the worker recruiter agency (TPB). The TPB guided them as stated in an agreement that says they agreed to transfer money to their family in the amount and maximum of IDR 3,000,000/month, and the rest shall be saved and brought home at the end of the period of work for buying property, land, house or any other use. The TPB has created the agreement under their experience with the prior worker. Some of them had sent their money to the family, and the money was used for pointless purposes by the family members. Hence with such experience, TPB involved themselves in handling the workers' income. Using such an approach, most workers can acquire property and create businesses to sustain their families' lives.²⁴

²² Putra, "Final Report Udayana Research Grant, Legal Protection Scheme Capacity in Public Private Legal Instrument in the Providing of Legal Protection for Indonesian Seasonal Worker in New Zealand."

²³ Putra.

²⁴ Putra.

Balinese workers are anticipating that the government will cut the immigration paperwork cost in both countries to uplift their standard of living. The cost for immigration papers is, on average, IDR 25 million, which is too expensive for low-salary workers. The workers believe the government of Indonesia would adopt a more pro-poor policy in compliance with the Indonesia Workforce Act. They hope the government would free them from such fees instead of providing help for them with a set quantity of monetary funds to enable them to secure their income for their family's social and economic development.

The Company's Judgement

The management of DMS, including the Site Manager, the Production Manager, the Group Manager, the Compliance Manager, and the CEO, attested that most Indonesian employees perform their duties admirably. They are courteous. They perform their duties correctly, with a high degree of conformity, and have completed their assignments. Consequently, the company always deals with the right items outside the scope of its business. Based on these considerations, management anticipates hiring additional workers from Bali. However, New Zealand law prohibits them from having such expectations. The government of New Zealand regulates the number of foreign workers occupying local positions in each company. For DMS, the total number of Indonesian personnel is capped at 24. Under the Common Wealth society, the state must favour common wealthy citizens such as Vanuatu. This fact reveals a disparity between the firm expectation and the availability of the Indonesian foreign worker. The company has requirements for workers, but they may still need to be met under the Common Wealth.

Additionally, there needs to be more clarity between the workers' expectations and the company's demands. According to the public policy theory, it is necessary to intervene by assessing the current situation and developing policy to address the needs of the gap. The Indonesian government may employ diplomatic channels to address this issue by urging the New Zealand government to increase its quota for Indonesian workers, thereby resolving the situation on both sides. Under such interference, the Indonesian government will respect the rights of its employees. At the same time, the New Zealand government would efficiently fulfil the company's needs.²⁵

Two reasons support this idea: *firstly*, the Indonesian proposing such jobs are mostly poor and unskilled workers, which become the concern of the United Nations or all nations. Under the SDG scheme, poverty is the problem and the responsibility of all countries. *Secondly*, the New Zealand government, by taking such an offer, would efficiently cover the New Zealand companies' needs and thus would maintain the production sustainability of the company. Both states, for such reasons, may jointly combat poverty and support the company's needs for the sustainability of their production.

The scheme adopted by the TPB for fulfilling the needs of the poor people and the corporation is an excellent plan due to the compassion and economic vision and mission of the United Nations.²⁶ They work hard on countering the Indonesian contra-productive laws of

²⁵ Putra.

²⁶ United Nations, "Transforming Our World: The 2030 Agenda for Sustainable Development," n.d.

regulation involving overseas workers by participating the worker candidate in the workforce training supplied by the Indonesian Worker Training Center. Hence, this set of workers may equally enjoy their rights given by Indonesian Law. The TPB opines that the rule is supposed to be applied under the nature of the worker's needs and the firm. Two options may be utilised, such as: *first*, the training, if required, should be supplied freely for disadvantaged workers. *Secondly*, the training may be applied limited to the company's needs. For example, there might be some workers who need no training and others who need specific technical training, depending on the job the company offers. Such regulation must be matched to the needs of the corporation's workers.

Another amazing thing found in the research is two facts about the TPB: *first*, the purity of mercy of the TPB. There are no hidden agendas at the back of the kindness of TPB, including their expectation of sharing the worker's salary; *secondly*, TPB's influence in managing the workers' earnings is purely aimed at improving the standard of living of the workers. This kind of affirmative scheme strongly supports the target of Indonesia and the UN policy on combating poverty. Hence, any equal effort to support such a scheme should be encouraged by the Indonesian government and enhance any opportunities provided by the workers. The NZ government is willing to receive more Indonesian workers. If both countries have a similar vision of combating poverty, those proposed policies might be easily adopted.²⁷

Contextual Problem of Policy under Indonesian and New Zealand Law

Contextual Problems under Indonesian Law

The Act on Workforce 2003 has provided various rules on employment protection. Article 4 of the Act stated that the regulation on the Workforce was aimed at promoting the employment capacity and enhancing its humane treatment, adjusting the distribution of job opportunities, increasing the employment capacity's compatibility with the needs of the labour market, providing legal protection for promoting the prosperity and standard of living of the workers, and promoting the prosperity of the workers and their families. Article 5 of the Act reaffirmed that every worker must have equal employment opportunities and be protected from discrimination. Article 27, paragraph 2 stipulates that every Indonesian citizen has the right to employment opportunities and humane well-being. Article 31 protected equal rights for employment opportunities for all workers, including choosing, obtaining, and transferring from one job to another and earning a livable wage in Indonesia and abroad. Article 32 contains three paragraphs that stipulate: (1) the placement of workers is based on open, free, objective, just, and non-discriminative principles; (2) the placement of workers shall be properly competency-based and in conformity with the workers' skill, talent, passion, and capacity with particular concern on human dignity, human rights, and legal protection; (3) the placement or worker shall consider equality in opportunity and the need of the user.

Act Number 6 of 2012 regarding the Ratification of *the International Convention on the Protection of the Rights of All Seasonals Workers and Members of Their Families* has been ratified under the Constitution of the Republic of Indonesia 1945, which mandated the state to

²⁷ Nations.

have high respect for human dignity and human rights. Therefore, the employment rights, including the Indonesian overseas migrant workers and their families, shall be firmly respected and may not be ignored, decreased, or breached. Furthermore, as a part of the international community, Indonesia is obligated to deliver respect, appreciation, and recognition of all principles and the purposes of the Universal Declaration of Human Rights.²⁸

The Indonesian government has also adopted Regulation Number 4 of 2015 concerning the Commencement of Supervising for the Placement and Protection of the Indonesian Overseas Seasonal Workers, Government Regulation Number 3 of 2013 concerning the Protection of the Indonesian Overseas Seasonal Worker, and Ministry Regulation Number 22 of 2014 concerning the Commencement of Placement and Protection of the Indonesian Overseas Seasonal Workers, which established several rules. In actuality, Indonesian Government Regulation Number 4 of 2013 on the Placement of Indonesian Overseas Workers has drafted several contra-productive requirements for unskilled and poor workers, such as a formal education certificate (Article 11 paragraph c), a competency test that is largely incompatible with the actual competency required by the receiving company (Article 14 paragraph 1), and a variety of health examinations that come with a hefty price tag. Most Indonesian workers in New Zealand have grumbled about the above unfriendly rules. Nevertheless, they must submit to some unnecessary tests and inspections that are completely unrelated to the needs of the company's customers.

The Act and the Regulation are set up under a positive intention and target of achievements. However, it has failed and developed a contra-productive impact on the worker, the poor and unskilled workers; on the contrary, they have been burdened by various requirements of the regulation, both financially and administratively, and have restricted them from participating in the international jobs market. This problem needs to be resolved because of two reasons: *first*, the Law contained in internal rules conflicts between Article 4, Article 5, and Article 32 of Act on Workforce 2003 and Article 11 paragraph c and Article 14 paragraph 1 of the Indonesian Government Regulation on Placement of Indonesian Overseas Worker 2013 which set general rules on the principle of equality and non-discrimination on the placement of workers and also general requirements on competency test and health checkup overall Indonesian overseas seasonal worker regardless the nature of the job and the social condition of the workers which caused these rules in conflict with regulations under Article 31 and Article 27 which ensure the people's rights to the job including preserved equal rights for jobs opportunity for all workers including choosing, getting, and transferring from one job to the other and earning a reasonable income. In contrast, the rule under Article 4, Article 5, and Article 32 is also in violation of Article 3 of the Presidential Regulation of the Republic of Indonesia Number 59 of 2017 concerning the Implementation of Sustainable Development Goals Target of Achievement, which mandates that all ministries and state institutions must adapt their policies to conform with the SDGs target achievement. The late adaptation of Law and regulation in the field of Workforce has resulted in the Law and regulations in this field conflicting with the rules governing affirmative action for poor and unskilled people as outlined in Article 2, paragraph 1

²⁸ United Nations, "Universal Declaration of Human Rights," 2015.

(zero hunger, zero poverty) of the Presidential Regulation on SDGs for 2017. Consequently, Article 4, Article 5, and Article 32 of the Act on Workforce 2003 and Article 11 paragraph c and Article 14 paragraph 1 of the Indonesian Government Regulation on Placement of Indonesian Overseas Workers 2013 must be amended to include more technical rules on specific treatment of each job and worker based on their nature.²⁹

Policy Problems in New Zealand Law

The New Zealand Immigration Act 2009, The Immigration Amendment Act Number 2 of 2015, the New Zealand Contract Law, and the overseas seasonal worker national policy govern the Law applicable to foreign workers in New Zealand. The 2009 Immigration Act is the primary source for New Zealand's immigration regulations. This rule addresses: the visa to travel to or stay in New Zealand, including the certification of immigration instructions and the rules and criteria for the grant of visas; places responsibilities on people when they first arrive in New Zealand; the legal basis for New Zealand to meet its international responsibilities under the Refugee Convention, the Convention Against Torture, and the International Covenant on Civil and Political Rights; the requirements with regards to the information that visitors, seasonal, students, employers, and educators must meet and give to Immigration New Zealand; rule for the grounds for deportation and creates criminal offences relating to immigration; and the Immigration and Protection Tribunal, an independent tribunal which hears residence appeals, refugee and protection appeals, and appeals against deportation. The 2009 Immigration Act modified this Act. The amendment contains rules to protect migrant workers from exploitation, strengthen the immigration compliance regime, address technological advances, and clarify certain provisions of the 2009 Immigration Act.

The contract for overseas seasonal workers covers a set of formal elements for protecting overseas seasonal workers, which the parties should follow, such as (1) *Application*, which covers: position, duties, type of employment agreement, and trial period; (2) *Terms*, covers: Hours of work, Shift cancellation, Breaks, Rules, Policies & Procedures, Tool of the trade, Uniform & Professional Presentation; (3) *Remuneration and Benefits*, covers: Payment of wages, Kiwi Saver, Commission, Overtime, Special rates, Bonus, Paying back expenses, Allowances, Mobile devices, Parking, Vehicle, Pay review, Taking money from pay, Skill payment, Leave, Public holidays, Annual leave, Annual closedown, Sick leave, Sick leave: medical certificate, Bereavement leave, Parental leave, Leave for other reasons, Unpaid leave.³⁰

The aforementioned elements of employment contracts demonstrate a comprehensive and appropriate rule for ensuring the satisfaction of Indonesian seasonal workers abroad. The contract provides adequate protection for worker rights regarding human rights and economic standards of living. Ministry of Business, Innovation, and Employment New Zealand published a booklet titled International Labor Conventions Ratification by New Zealand in June 2015, compiling the content of international legal instruments adopted by the government of New Zealand. The only contra-productive policy in New Zealand is the restriction on the number of foreign seasonal workers hired by New Zealand companies, which is limited to 24 per

²⁹ Elmer Doonan, *Drafting* (Cavendish Publishing, 2001).

³⁰ Builder, "Employment Agreements, Made Easy."

company. This demonstrates a disparity between the company's need for low-cost workers for production sustainability and the availability of a large number of workers, particularly those of Indonesian origin. It also needed more support for the SDGs' global poverty reduction policy.

CONCLUSION

The contextual analysis of the nature of jobs and workers for overseas seasonal workers offered by New Zealand's grower companies led to a conclusion. For Indonesia, it is a fact that there is a certain type of job suitable for poor and unskilled Indonesian overseas seasonal workers that do not require a certain level of education and English proficiency, which is not sufficiently supported by Indonesia's relevant Act and Regulations for overseas seasonal workers in the form that such Law exists. This contextual issue of Law and regulation increases the community expectation of the Indonesian poor and unskilled overseas seasonal workers that the Law will be amended in accordance with the nature of the job offered and the social condition of the workers by developing rules on specific standards and requirements suitable to the poor and unskilled workers. Therefore, the Law and regulation could effectively fulfil poor and unskilled workers' employment and placement rights. For New Zealand, contextual analyses indicate that New Zealand grower companies prefer Indonesian, particularly Balinese, poor and unskilled overseas seasonal workers since they meet the company's basic requirements. However, government policy restricts the number of workers per business. Furthermore, following the SDG global policy, the government is expected to adopt a more optimistic stance. Thus, both the company and the worker can have their needs met.

The contextual analysis of Indonesian and New Zealand Law and regulation resulted in the following: *for Indonesia*, the Law contained in internal rules conflict between Article 4, Article 5, and Article 32 of Act on Workforce 2003 and Article 11 paragraph c and Article 14 paragh 1 of the Indonesian Government Regulation on Placement of Indonesian Overseas Worker 2013 which set general rules on the principle of equality and non-discrimination placement of workers and also general requirements on competency test and health checkup overall Indonesian overseas seasonal worker respectless the nature of the job and the social condition of the workers which caused these rules in conflict with regulations under Article 31 and Article 27 which ensure the people's rights to the job including preserved equal rights for jobs opportunity for all workers including choosing, getting, and transferring from one job to the other and earning a reasonable income. Instead, the rule under Article 4, Article 5, and Article 32 has also contrary to Article 3 of the Presidential Regulation of the Republic of Indonesia Number 59 of 2017 concerning the Implementation of Sustainable Development Goals (SDGs) Target of Achievement, which requires all ministries and state institution shall adopt their policy conforming the SDGs target achievement.³¹ The late adaptation of Law and regulation in the field of Workforce has resulted in the Law and regulations in this field conflicting with the rules governing affirmative action for poor and unskilled people as outlined in Article 2, paragraph 1 (zero hunger, zero poverty) of the Presidential Regulation on SDGs for 2017.

³¹ Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional, "Pedoman Teknis Penyusunan Rencana Aksi Tujuan Pembangunan Berkelanjutan (TPB)/Sustainable Development Goals (SDGs) (Technical Guidance for Action Planning Development for Sustainable Development Goals)," 2020.

Consequently, Article 4, Article 5, and Article 32 of the Act on Workforce 2003 and Article 11 paragraph c and Article 14 paragraph 1 of the Indonesian Government Regulation on Placement of Indonesian Overseas Workers 2013 must be amended to include more technical rules on the specific treatment of each job and worker based on their nature. Ministry of Business, Innovation, and Employment New Zealand published a booklet titled International Labor Conventions Ratification by New Zealand in June 2015, which compiled the content of international legal instruments adopted by the government of New Zealand. The only contra-productive policy in New Zealand is the restriction on the number of foreign seasonal workers that can be hired by New Zealand companies, which is limited to 24 per company. This demonstrates a disparity between the company's need for low-cost workers for the sake of production sustainability and the availability of a large number of workers, particularly those of Indonesian origin. It also needed more support for the SDGs' global poverty reduction policy.

REFERENCES

- Brouwer, P.W. *Coherence and Conflict in Law*. Boston: Kluwer Law and Taxation Publishers Deventer, 1992.
- Builder, Employment Agreement. "Employment Agreements, Made Easy," n.d.
- Cambridge Dictionary. "Picker Is a Person Whose Job Is to Remove Fruit, Cotton, Etc. from a Tree or Plant When It Is Ready," n.d.
- Chen, Lung-chu. *An Introduction to Contemporary International Law: A Policy-Oriented Perspective*. Oxford University Press, 2014.
- Doonan, Elmer. *Drafting*. Cavendish Publishing, 2001.
- Gibson, John, and Rochelle-Lee Bailey. "Seasonal Labor Mobility in the Pacific: Past Impacts, Future Prospects." *Asian Development Review* 38, no. 1 (2021): 1–31. https://doi.org/10.1162/adev_a_00156.
- Horticulture. "Jobs and Labor," n.d.
- Kemlu. "There Are Some 115 Indonesian Overseas Workers from Tulungagung East Java Had Been Accepted for Working in Hasting Growers Company New Zealand. Some 49 of Them Had Arrived in January 2007 and the Rest Some 66 Persons Has Arrived in 4th and 22nd February 20," n.d.
- Levade, Anne. "Positive Discrimination and the Principle of Equality in French Law." *Pouvoirs* 111, no. 4 (2004): 55–71. <https://doi.org/10.3917/pouv.111.0055>.
- Macdonald, Ronald St John, and Douglas Millar Johnston. *The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory*. Vol. 6. Martinus Nijhoff Publishers, 1983.
- McDougal, Myres S. "Law as a Process of Decision: A Policy-Oriented Approach to Legal Study." *Nat. LF* 1 (1956): 53.
- Nasional, Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan. "Pedoman Teknis Penyusunan Rencana Aksi Tujuan Pembangunan Berkelanjutan (TPB)/Sustainable Development Goals (SDGs) (Technical Guidance for Action Planning Development for Sustainable Development Goals)," 2020.

- Nations, United. "Transforming Our World: The 2030 Agenda for Sustainable Development," n.d.
- . "Universal Declaration of Human Rights," 2015.
- Nonet, Philippe, and Philip Selznick. "Law and Society in Transition: Toward Responsive Law (1978)." *Diterjemahkan Oleh Raisul Muttaqien, Cetakan 1* (1969).
- Putra, Ida Bagus Wyasa. "Filsafat Ilmu: Filsafat Ilmu Hukum." *PT Raja Grafindo Perkasa, Jakarta*, 2015.
- . "Final Report Udayana Research Grant, Legal Protection Scheme Capacity in Public Private Legal Instrument in the Providing of Legal Protection for Indonesian Seasonal Worker in New Zealand." Jimbaran, 2017.
- Research, Plant & Food. "New Zealand Horticulture Exports Resilient in the Year of the COVID-19 Pandemic," 2021.
- Seidman, Ann, Robert B Seidman, and Nalin Abeyesekere. *Legislative Drafting for Democratic Social Change*. Kluwer Law International BV, 2001.
- The evolution of human rights, Council of Europe. "These Rights Ensure People to Enjoy Equality and Guaranteed Access to Essential Social and Economic Goods, Services, and Opportunities," n.d.