

# THE SIGNIFICANCE OF FOREIGN MANPOWER USE VIA GOVERNMENT REGULATION 34 OF 2021: A Case Study of Siyasa Dauliyah

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## ABSTRACT

Foreign Workers are inextricably linked to problems and, as documented in the Makassar City Manpower Office's violation data, there are three things that are problematic. First, the Employer does not pay taxes. Second, the prohibition on the use of personnel positions. Thirdly, visa abuse. This is a field study utilizing a syar'i and sociological juridical approach. The study gathered data through primary sources, namely interviews, and secondary sources, namely the examination of legal materials and literature. The study's findings reveal that the usage of foreign workers leads in a high number of offenders in Makassar City, one of which is a lack of monitoring. This is due to the Pora Team's lack of firmness in dealing with field violations and factors from employers of foreign workers who do not comply with required requirements, one of which is avoiding required fees, which is permitted under the legal siyasa dauliyah as long as the service commodities traded do not contain harmful substances. with regard to QS. An-Nisa/4:29

*Keywords: Foreign; Use; Labor*

## INTRODUCTION

International relations are basically founded on long-term peace, however enthusiasm is used on a limited scale in practice. For Muslims<sup>1</sup>, the use of force in international relations serves only to defend themselves against foreign attacks and to complete the Prophet's da'wah to his followers. Islam has always adhered to the non-aggression policy toward its colleagues and neighbors, as well as the principle of peace and the establishment of peace treaties with them. Despite the declaration of war, Islam adheres to the principle of peaceful cohabitation with neighboring countries. The emphasis on neighboring countries' standing in times of peace has a bearing on the Islamic State's relationship with Dar al-harb. Foreign countries are then classified into two categories, musta'min and zimmi. Both of these factors have an

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<sup>1</sup> Achmad Musyahid Idrus, Tradisi Penalaran Filosofis Dalam Hukum Islam, *al-daulah*, Volume 3, Number 1, (June, 2014), p. 45.

effect on their legal treatment and access to state facilities. Additionally, it does not preclude the potential of diplomatic connections between Islamic countries and their neighbors in the context of bilateral cooperation<sup>2</sup>

International law protects all countries' rights and powers to exercise jurisdiction over people or objects, as well as any activities that have an effect on that country.<sup>3</sup> According to these various legal studies, the fundamental essence of progressive legal justice resides in the soul of the community or nation, and thus its enforcement must take into account the values of justice that exist and are adhered to by the majority of the community or nation, rather than the other way around, where the community or nation must promote justice. they are subject to the law..<sup>4</sup>

Indonesia, as a state of law, requires development in order to achieve the state's purpose of ensuring the welfare of its citizens, including employment development. The notion of law is described as the fundamental tenets of a legal community's legal policy. The policy's fundamental tenets are fundamentally a statement of legal attitudes or culture, philosophy or law, legal forms, and designs that shape and apply the civilizational values they possess.<sup>5</sup>

Legal protection refers to the safeguarding of legal entities through the use of legal tools, both preventative and repressive, written and unwritten.<sup>6</sup> Confronting global developments through the sophistication of technology and information also has an impact on the economic sector, where economic globalization has been programmed into the national development agenda through the creation of jobs for the welfare of the people as part of a plan to improve the employment climate. Recognizing deeply that the development of the Indonesian people, which aims to develop the Indonesian people as a whole and to improve the community's welfare as a whole, necessitates a realignment of various aspects of people's lives in the socio-economic sphere in general, and particularly in labor relations.<sup>7</sup>

Since Indonesia's independence, the government has enacted a variety of labor-related legal instruments, the scope of which encompasses practically all aspects of labor law. This is consistent with the welfare status of Indonesian employees, who are currently in the bottom rung, regardless of the difficulties faced by workers in

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<sup>2</sup> Subehan khalik, Hubungan-Hubungan Internasional Di Masa Damai, *al-daulah*, Volume 3, Number 2, (December, 2014), p. 239-240.

<sup>3</sup> Ashabul Kahfi, Penyelesaian Sengketa Konsumen Sebagai Wujud Perlindungan Konsumen Muslim, *El-Iqrishady*, Volume 1, Number 1, (June, 2019), p. 68.

<sup>4</sup> Muhammad Aswad, Lomba Sultan, Sohrah. Pengawasan Terhadap Warga Negara Asing Di Wilayah Kerja Kantor Imigrasi Kelas 1 Makassar Perspektif Siyasah Syar'iyah, *Siyasatuna*, Volume 3, Number 2, (May, 2021) p. 416.

<sup>5</sup> Nila Sastrawati, Hukum Sebagai Sistem Integrasi Pertimbangan Nilai Keperawanan Dalam Kasus Perkosaan, *Al-daulah*, Volume 1, Number 1, (December, 2013), p. 96.

<sup>6</sup> Achmad Musyahid Idrus, Perlindungan Hukum Islam Terhadap Janin, *Al-daulah*, Volume 4, Number 1, (June, 2015), p. 78.

<sup>7</sup> Ramdlon Naning, Perangkat Hukum Hubungan Perburuhan (Industrial) Pancasila (Jakarta: Ghalia Indonesia, 2003), p. 183.

Indonesia who are not yet competitive.<sup>8</sup> Enforce rules and regulations as part of the state's current legal system.<sup>9</sup> Numerous laws address the rights, obligations, and positions of the parties involved in employment, for example, Law No. 23 of 1948 on Labor Supervision, Law No. 21 of 1954 on Labor Agreements, and Law No. 22 of 1957 on Labor Dispute Settlement. Additionally, Indonesia entered a period of globalization, which necessitated changes in all domains, including employment. The ramifications are twofold: first, there are abundant work prospects for job searchers, particularly to fill positions abroad; and second, there is increased competitiveness in the domestic labor market for foreign labor investment in Indonesia. Then, on the democratization front, it raises workers' understanding of their rights, which must be respected without prejudice. Meanwhile, the era of decentralized politics was defined by the government's growing role (intervention) in the labor market.<sup>10</sup>

Throughout history, the evolution of Islamic law in Indonesia has taken numerous forms.<sup>11</sup> International relations in Islam are fundamentally centered on perpetual peace,<sup>12</sup> Islam does not disregard the principle of peaceful cohabitation with neighbors. The emphasis on the State's status in times of peace has influenced the Islamic State's relationship with Dar al-harb. The foreign country's position is then separated into two sections, *musta'min* and *zimmi*. One of the Zimmah agreement's provisions affecting their rights and obligations within the Muslim community. There is one right that must be addressed, namely their freedom to become state officials, but their status in principle is inextricably linked to Muslims' ability to obtain their rights.<sup>13</sup>

Makassar City is a metropolitan area with an increasing urbanization rate, with Makassar serving as the Provincial Capital of South Sulawesi.<sup>14</sup> The Government Regulation No. 34 of 2021 on the Use of Foreign Workers governed the procedures for the use of foreign workers, the requirements for foreign workers, and a variety of additional regulations pertaining to the use of foreign workers. The employment of foreign workers in Makassar City is inextricably linked to the infractions that occurred, including non-payment of the DKPTKA, employment of foreign workers in

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<sup>8</sup> Ashabul Kahfi, Pengupahan: Tinjauan Terhadap Permasalahan Ketenagakerjaan di Indonesia, *Jurisprudentie*, Volume 5, Number 2, (December, 2018), p. 68.

<sup>9</sup> Akham Jayadi, Problematika Hukum Dan Solusinya, *Al-Risalah*, Volume 15, Number 2, (November, 2015). p. 1.

<sup>10</sup> Ashabul kahfi, Perlindungan hukum terhadap tenaga kerja, *Jurisprudentie*, Volume 3, Number 2, (December, 2016), p. 60.

<sup>11</sup> Abdi Widjaja, Sejarah Kedudukan Hukum Islam Dalam Konstitusi-Konstitusi Indonesia (Sistem Ketatanegaraan di Indonesia), *Al-daulah*, Volume 7, Number 2, (December, 2018), p. 234.

<sup>12</sup> Nur Taufik, Syari'ah: Antara Hukum Dan Moral, *Al-Risalah*, Volume 20, Number 1, (May, 2020), p. 87.

<sup>13</sup> M. Daud Ali, *Islam Ditinjau Dari Berbagai Aspeknya*, Jilid 1, (Jakarta: UI Pers, 1985), p. 34.

<sup>14</sup> Asmah, Analisis Efektivitas Kebijakan Pemerintah Kota Makassar No 15 Tahun 2009 Tentang Perlindungan Pemberdayaan Pasar Tradisional Dan Penataan Pasar Moderen, *Al-daulah*, Volume 7, Number 2, (December, 2018), p. 221.

positions that need personnel management, and visa misuse. This is due to a lack of effective oversight.

On the basis of the foregoing, the problem is defined, including the following: How is the use of foreign workers governed by Government Regulation Number 34 of 2021? What is *siyasa dauliyah*'s position on the employment of foreign workers?

## METHOD

This is a field study (Field Research). The purpose of this research is to examine the utilization of foreign workers in Makassar City under Government Regulation No. 30 of 2021 from the perspective of *Siyasah Dauliyah*. The data for this study came from informant interviews and pertinent books. This research takes a *syar'i* and a sociological-juridical approach. Primary and secondary data. The data analysis is based on information gathered through interviews, field notes, and documentation. The data is gathered and processed in order to arrive at a conclusion that is appropriate.<sup>15</sup>

## RESULT AND DISCUSSION

### 1. Employing Foreign Workers in accordance with Government Regulation 34 of 2021

Foreign Workers, abbreviated as TKA, are foreign nationals who have obtained visas with the goal of working in the Indonesian territory. The regulation governing the employment of foreign workers is Government Regulation No. 34 of 2021 on the Employment of Foreign Workers (TKA). The rule controls five aspects of its application: the criteria for the employment of foreign workers, the duration of the RPTKA, specific positions and times, education and training for local workers who accompany foreign workers, and coaching and supervision of foreign workers.

It fosters the acceleration or acceleration of national growth selectively through the use of foreign employees, subject to limitations limiting the quantity of foreign workers engaged. Additionally, the employment of foreign workers contributes to the improvement of the quality and competency of indigenous workers through a training system.

According to Government Regulation No. 34 of 2021 on the Use of Foreign Workers, an Employer of Foreign Workers must submit an application online to the Minister or other designated authority in order to acquire Ratification of the RPTKA. The Employer of the Foreign Worker submits an application for Ratification of the RPTKA that includes the following information:<sup>16</sup>

- Employer's identity,

<sup>15</sup> Rahmatia, *Terampil Menulis Karya Ilmiah* (Makassar: Alauddin University Press, 2012), p. 30-43.

<sup>16</sup> Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers

- Reasons for using foreign workers,
- Position or position of foreign workers in the company's organizational structure,
  - Number of foreign workers,
  - Term of use of foreign workers,
  - Work location of foreign workers,
  - Identity of Foreign Workers Assistance, and
  - Plan to absorb Indonesian workers

In PP No. 34 of 2021 on the Use of Foreign Workers, article 12, paragraph (3), it is specified that the employer of the TKA must submit the following documents with the request for ratification of the RPTKA:

- a. Application letter,
- b. Foreign worker employer's business identification number and/or business license,
- c. Deed and decision ratifying establishment and/or amendment from the authorized agency,
- d. Evidence of mandatory employment report at the company,
- e. Draft work agreement or other agreement,
- f. Change organizational structure chart,
- g. Surat pernyataan untuk penunjukan Tenaga Kerja Pendamping TKA,
- h. Statement letter for appointment of Foreign Workers Assistance,
- i. Statement letter to carry out education,

Following that, Article 13 paragraph (1) of Government Regulation Number 34 of 2021 specifies that the nominated minister or official shall analyze the viability of the RPTKA application presented by the TKA Employer once it is pronounced complete and large. The minister or other appointed official then releases the feasibility assessment's findings. Ratification of the RPTKA shall occur no later than 2 (two) working days after the feasibility evaluation determines that the TKA Employer is feasible.

The TKA Employer transmits data on the prospective TKA to the Minister or other designated authority online based on the results of the feasibility assessment for ratification of the RPTKA. (Article 14, Presidential Proclamation No. 34 of 2021). Data about prospective foreign employees, specifically:

- a. Foreign Workers' Identification,
- b. Foreign Workers' Positions and Working Periods,
- c. Foreign Workers' Work Locations
- d. Determination of the foreign worker's code and domicile place

Employers of international workers must provide at least the following documents when reporting data on prospective foreign workers:

- a. certificate of education,

- b. certificate of competence or work experience,
- c. employment contract or other agreement,
- d. determination of the foreign worker's code and domicile location,
- e. certificate of appointment of Foreign Workers Assistance,
- f. statement letter as guarantor of foreign workers,
- g. current account/savings of foreign workers or employers of foreign workers.

If the data and documentation pertaining to the prospective TKA are certified complete and accurate, and the Employer of the TKA has paid the DKPTKA, the Minister or the designated official shall issue the RPTKA Ratification. The RPTKA approval serves as a recommendation for obtaining a visa and residence permit while dealing with international personnel. The minister or designated official submits data on prospective foreign workers who will be employed online to the minister responsible for government affairs in the fields of law and human rights or to the designated official as a recommendation for obtaining visas and residence permits in connection with work.

Similarly, Government Regulation Number 34 of 2021 specifies in Article 15 that the application for Ratification of the RPTKA must be filed to the Minister or an appointed official and must include at least the following details on the potential TKA:

- a. Determination of the foreign worker's identity;
- b. Determination of the foreign worker's position and working time;
- c. Determination of the foreign worker's work location; and Determination of the foreign worker's code and domicile place
- d. Determination of the foreign worker's code and domicile place.
- e. The Employer of Foreign Workers submits an application for Ratification of the RPTKA, which must include at least the following documents:
- f. letter of application and justification for hiring foreign workers;
- g. draft labor agreement or other contract; and/or
- h. letter of approval from the relevant authority.

The Minister or an appointed official shall verify data on prospective foreign workers and documentation within two (two) working days. When the Minister or other designated official certifies that the data on potential foreign employees and documents are complete and accurate, the Minister or other designated official issues the RPTKA Ratification. The RPTKA approval serves as a recommendation for obtaining a visa and residence permit while dealing with international personnel. The minister or designated official submits data on prospective foreign workers who will be employed online to the minister responsible for government affairs in the fields of law and human rights or to the designated official as a recommendation for obtaining visas and residence permits in connection with work.

According to the results of an interview with Mr. Mursalim Supriadi, Head of

## Development and Expansion of Employment Opportunities at the Makassar City Manpower Office:

“the first stage is for the employer to register an account on the online TKA website prior to applying for an RPTKA. Following that, the employer uploads an online RPTKA application, which is then verified, along with the RPTKA data and teleconference scheduling. In the course of conducting an online teleconference. Then print the RPTKA SK draft. Thus, the next step is to determine the feasibility of employing foreign workers; in this case, the draft for employing foreign workers is reviewed first to determine whether the company requires a large number of foreign workers, the positions the foreign workers will fill, and any necessary transfers. The Dinasker will then determine if the RPTKA presented by this company truly requires foreign workers or whether the TKL can still fill the vacancy. If it can still be inhabited by indigenous workers, the Manpower Office has the ability to reject the company's proposal, and vice versa. Following that, the RPTKA SK can be viewed via the company account. The second stage is to verify prospective foreign workers' information. The employer of the foreign worker is then notified of the foreign worker's use and is required to pay the DKPTKA. This DKPTKA payment is being made in the form of PNBPN or regional revenue. Interestingly, Makassar already has a PERDA on IMTA levies, which means that foreign workers in Makassar have contributed to Makassar City's Original Regional Revenue (PAD). After the DKPTKA payment is confirmed, the Department of Manpower may issue the RPTKA ratification. The third stage is to provide data on prospective foreign workers to the Director General of Immigration and to ratify the RPTKA in order to receive visas and residence permits. After completing the process, overseas workers may begin working. We, at the Department of Manpower, are inextricably linked to PP No. 34 of 2021, which applies and examines the derivatives that previously existed, including the legislation governing foreign workers.”<sup>17</sup>

The occurrence of foreign workers as a result of employers or companies requiring foreign workers with competence not possessed by local workers. In Makassar City, the company employs 30 foreign workers in a variety of positions. However, employers and foreign workers have committed breaches as well. Each time a violation occurs, the violator will face sanctions, which may include the following :

- a. *Failure to pay DKPTKA (PP 34 Art. 23/1)*

According to Article 35 of the Minister of Manpower's No. 8 of 2021, employers of foreign workers must pay DKPTKA of US\$100 (one hundred

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<sup>17</sup> Mursalim Supriadi, Head of Job Opportunity Development and Expansion, Makassar City Manpower Office, Interview on August 25, 2021.

dollars) per person and per month or regional income in the form of regional taxes. If a business hires foreign labor for less than one month, the firm is obligated to pay DKPTKA for the entire month.

This DKPTKA payment is made at the start of the RPTKA ratification period. Payment of DKPTKA as Non-Tax State Revenue (PNBP) is made directly to the State Treasury via the Perception Bank, based on the notification letter of DKPTKA payment as PNBP. Meanwhile, the payment of DKPTKA as regional revenue is made through a bank selected by the regional government based on the notification letter of payment of DKPTKA as regional income.

According to the results of an interview with Mr. Mahardika, Head of the Office for Manpower Placement at the Makassar City Manpower Office :

“the impact of the violator is in the form of administrative sanctions against employers who do not pay DKPTKA for each foreign worker they employ, specifically the sanction of revocation of RPTKA Ratification”.<sup>18</sup>

b. *Employing foreign nationals in management positions (PP 34 Article 11/1).*

Government Regulation No. 34 of 2021 states in the field of Foreign Workers that there are laws barring foreign workers from working in the personnel field. The restriction laws are directed at businesses or employers, as specified in Article 11 of Government Regulation No. 34 of 2021. According to the results of an interview with Mr. Mahardika, the Head of the Makassar City Manpower Office's Manpower Placement Office :

“the violation of employing foreign workers in personnel-related positions has the effect of revoking the RPTKA ratification for employers who employ foreign workers”.<sup>19</sup>

c. *Visa Abuse*

Foreign workers in Makassar City have followed established processes. However, foreign workers commit violations as well. The infraction takes the form of Visa abuse. A visit visa is meant for tourism-related activities, family visits, and other non-work-related visits. This visit

<sup>18</sup> Mahardika, Head of Manpower Placement at the Makassar City Manpower Office, Interview on August 13, 2021.

<sup>19</sup> Mahardika, Head of Manpower Placement at the Makassar City Manpower Office, Interview on August 13, 2021.



visa is a loophole that is frequently exploited by international workers seeking employment in Makassar City.

**Table 4.2 Investigations of Immigration Crimes (Projustisia) Makassar Class 1 Immigration Office in 2021**

No	Full Name	Country	No. Passport	Article Suspected	Description
1	Yu Ke	China	E 289073226	Article 122 Letter a RI Law No. 6 Year 2011 Concerning Immigration	Deportation
2	Cai Yong Cong	China	EA 3804985	Article 122 Letter a RI Law No. 6 Year 2011 Concerning Immigration	Deportation

Source: Makassar Class I Immigration Office

According to an interview with Mr. Rachmad Ardiyanto S.H., Makassar City's Head of Intelligence and Immigration Enforcement:

"misuse of this visit visa is one of the immigration infractions for foreign workers." We Immigration offers consequences in the form of Immigration Administrative Actions (TAK) by deporting foreign workers who violate these standards, and criminal sanctions for breaking these rules are implied in Article 122 Letter an of Law Number 6 of 2021 on immigration. The danger of imprisonment under this article is a maximum of five years and a maximum fine of Rp. 500,000,000. Criminal threats for visa abuse can entangle foreign nationals in more ways than one. Employers, sponsors, guarantors, and anybody else who commands or facilitates foreigners abusing visit visas face criminal penalties as well. The criminal threat is identical to that posed by foreign nationals, as defined in Article 122 Letter b of Law No. 6/2011 on Immigration."<sup>20</sup>

According to the authors' research, several factors contribute to foreign workers committing violations, including the following :

- a) The Makassar City Department of Manpower acknowledges that one of the challenges in maximizing foreign worker supervision is the limited

<sup>20</sup>Rachmad Ardiyanto, S.H, Head of Intelligence and Immigration Enforcement of Makassar City, Interview on 6 October 2021.

comprehensive database related to the use and requirements of foreign workers provided by the company to the Makassar City Department of Manpower.

b) The second controlling element is the corporation's failure to cooperate with the Makassar City Department of Manpower in reporting foreign workers employed by the enterprise. Additionally, there is a work permit that is set to expire but has not been extended, despite the fact that the employee is still employed by the company.

c) The factors that contribute to visa misuse are that the Immigration Party's supervision of foreigners has not been maximized, such as a lack of personnel and human resources, which are required quite a bit in the execution of functions and services to the community, as well as in the execution of the supervisory function on foreign nationals and workers. Foreign Work in and of itself.

d) The second factor is avoiding the costs incurred by employers who hire foreign workers, including remuneration for each foreign worker hired and the processing charge associated with a restricted stay visa utilized for labor.

The causes that contribute to foreign worker breaches in Makassar City have been discussed previously; they are a result of the city's lack of efficient oversight.

## 2. Siyarah Dauliyah's View on the Use of Foreign Workers

According to Islam, business and trade including the use of foreign employees are permitted or permissible as long as the service commodities traded do not include evil intent or cause harm to both the transacting party and those who have an effect on other individuals or society's welfare. Government Regulation No. 34 of 2021 on the employment of foreign workers is a permissible kind of business and trade in terms of services in Islam. However, if the use of foreign workers is inconsistent with the mechanism established for the use of foreign workers and results in the loss of opportunities for Indonesian workers to find work, thereby jeopardizing an individual's welfare, then business conducted in the Islamic view is prohibited because it contains elements of harm that cause harm to society. According to Q.S. An-Nisa ' /4: 29.

*"You who believe, do not eat each other's wealth through vanity, except in the course of voluntary commerce between you. And do not attempt suicide, for Allah is Most Merciful to you"*

The ease with which investors can employ international workers, as defined in Government Regulation Number 34 of 2021 on the employment of foreign workers, is a form of investment cooperation between Indonesia and other nations. Where corporate actions may have an effect on the social community's state. To ensure that the regulation's purpose is carried out appropriately, strict supervision is required.

Government regulations and policies must be closely tied to the principle of justice in order to ensure prosperity at all levels of society.

According to Ibn Timiyah, the government, as head of state and representative of the people, has the authority to intervene in the interest of greater benefit, such as poverty eradication, market oversight, and economic planning that benefits the community's welfare. Thus, there are three primary requirements for the state's administration in Islam as the holder of power, namely: a. The obligation to exercise state authority fairly, honestly, and prudently.

a) Without exception, all individuals must be able to experience the delights of justice that flow from state power.

b) The duty to exercise judicial authority fairly, regardless of one's status. Islam's equality concept, as stated in Q.S. Al-Hujurat/49:13.

“Indeed, We formed mankind from a male and a female and divided you into nations and tribes in order for you to communicate with one another. Indeed, the most honorable among you in Allah's eyes is the most pious of you. Allah is, indeed, All-Knowing, All-Knowing”.

From the preceding explanation, if it is related to Presidential Regulation No. 20 of 2018 on the use of foreign workers, it is the government's obligation as state administrators to make regulations for social welfare without exception, which must be felt by every individual so that these rules are adhered to.

## CONCLUSION

Government Regulation 34 of 2021 Relating to the Employment of Foreign Workers is one of the regulations controlling the employment of foreign workers. In the employment of foreign workers through a variety of procedures controlled by Government Regulation Number 34 of 2021 on the Employment of Foreign Workers. Foreign employees employed in Makassar City have been subjected to current procedures in compliance with these legislation. In terms of foreign employees, breaches in Makassar City include non-payment of the DKPTKA, employment of foreign workers in positions of authority, and visa misuse. These infractions happened as a result of a number of factors, including ineffective supervision and a lack of cooperation between the company and the Department of Manpower.

The Islamic position on Government Regulation 34 of 2021 regarding the employment of foreign workers is that such employment is legally lawful or permissible. However, if a breach of the legislation governing the use of foreign workers results in damage, only those infractions are prohibited in Islam, while the law governing the use of foreign workers remains permissible. Meanwhile, one could argue that the legislation is not fair to Indonesian workers because this facility is

enforced when foreign worker monitoring is suboptimal, ensuring that the regulation is completely executed and Indonesia's jobless rate remains in the millions.

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**Regulation**

Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers

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