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# Analysis of the Employment Law Policy for Foreigners in Indonesia in the Job Creation Law Viewed from an Islamic Law Perspective, Fathu Dzariah Wa Saddu Dzariah Rules

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## **ABSTRACT**

On January 22 2020 the DPR RI inaugurated the Draft Law (RUU) which included the Job Creation Bill. The inauguration of the Job Creation Bill under the leadership of President Joko Widodo aims to provide investment breakthroughs in the economic sector in Indonesia, so that it can compete with other countries. But it is very unfortunate that the steps and goals that were expected to bring progress and goodness to the Indonesian state have instead become a frightening specter among Indonesian society. The specter in question is the contents of the Omnibus Law in the Job Creation Law which provides freedom and ease for foreign workers to enter Indonesia. Meanwhile, on the other hand, there are laws which are felt to have overlapping roles, namely between Presidential Decree Number 20 of 2018 and Law Number 13 of 2003 relating to the obligation for foreign workers entering Indonesia to have written permission from the Minister or appointed official who ratifies it. According to the background of the problem above, there is a fundamental problem that will be discussed, namely how is the analysis of the Job Creation Law regarding foreign employment in Indonesia viewed from the perspective of Islamic law using the rules of Fathu Dzariah wa Saddu Dzariah? With a phenomenon like the one above, Islamic Law provides confirmation that the policy implemented by the government regarding the new regulations governing foreign workers to enter Indonesia more easily is something that causes harm even though it has a good aim for the Indonesian economy, but The bad impacts it causes are more than the good impacts on society.

Keywords: Job Creation Law, Islamic Law, Foreign Workers.

#### INTRODUCTION

On January 22 2020, the DPR RI inaugurated the draft law or what is known as a bill, one of which is the Job Creation Bill. The inauguration of the Job Creation Bill under the leadership of President Joko Widodo aims to provide breakthrough investment in the economic sector in Indonesia, so that it can compete with other countries. In Indonesia, there are many start-up businesses between the transition from unicorn to decacon. With the aim of a breakthrough in the field of economic investment, foreign workers (TKA) can freely enter Indonesia. If we examine before the Job Creation Bill was inaugurated, there were statutory regulations that regulated and provided special conditions for foreign workers who wanted to enter Indonesian territory. However, after the Job Creation Bill in Indonesia was inaugurated, it was in contrast to the previous law which provided difficult conditions for foreign workers to enter Indonesia. The Job Creation Bill actually makes it easier for foreign workers to enter Indonesia, under the pretext of providing value in improving the investment climate for Indonesia. Another aim is to increase Indonesia's ranking in Ease Of Doing Business. But it is very unfortunate that the steps and goals that were expected to bring progress and goodness to the Indonesian state have instead become a frightening specter among the Indonesian people themselves. This has led to debate, pros and cons, and quite a wave of demonstrations among Indonesian workers regarding the inauguration of the Job Creation Bill.

According to data obtained from the Directorate General of Civil Service and PKK of the Ministry of

<sup>&</sup>lt;sup>1</sup> https://nasional.kompas.com/read/2020/05/14/12080971/dpr-sahkan-berbagai-uu-dari-perppu-nomor-1-tahun-2020-sampai-uu-minerba diakses 12 April 2023 pukul 22.47





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Manpower, Maruli Apul Hasolan, in 2018 there were 95,000 foreign workers entering Indonesia. <sup>2</sup>The majority of foreign workers came from China, amounting to 32,000, followed by Japan, amounting to 13,897 people. Malaysia contributed to bringing in a workforce of 4,667 people. In this data, it is clear that there is a spike compared to 2017, which was only 85,974 foreign workers.

How not to give rise to pros and cons among Indonesian people while the contents of the Omnibus Law in the Job Creation Law provide freedom and ease for foreign workers to enter Indonesia, this can be read through the contents of the Omibus Law policy itself, namely:

- 1. Simplification of licensing
- 2. Investment requirements
- 3. Employment
- 4. Convenience, empowerment and protection of MSMEs
- 5. Ease of doing business
- 6. Research and innovation support
- 7. Government administration
- 8. Imposition of sanctions
- 9. The land acquisition
- 10. Investments and government projects
- 11. Economic area

Meanwhile, on the other hand, there are laws which are felt to have overlapping or very opposing roles.<sup>3</sup>Among them are Presidential Regulation Number 20 of 2018 and Law Number 13 of 2003. There is a conflict in Article 9 of Presidential Regulation Number 20 of 2018, there is a very striking difference by highlighting the regulations regarding the granting of permits for foreign workers to enter Indonesia to be employed., where Presidential Regulation Number 20 of 2018 is deemed to make it easier to allow foreign workers to enter Indonesia, in contrast to Article 43 paragraph 1 in Law Number 13 of 2003 which requires foreign workers entering Indonesia to have written permission from the Minister or appointed official who authorizes it. This regulation raises counterpoints because it makes it easier for foreign workers to occupy jobs in Indonesian territory, while many Indonesian citizens (WNI) themselves still have the status of being unemployed or looking for work.4

In the Islamic religion there are limitations in living this life, there are certain actions that are prohibited, there are also actions that are permitted. These limitations can be found in the law, in the Islamic religion there are sources of Islamic law, namely the Qur'an, Hadith, Ijma' and Qiyas.⁵From several sources of Islamic law, the branch of knowledge in Islamic law was born. One of them is the Saddu Dzariah and fathu dzariah methods. The bottom line is that Saddu Dzariah is a prohibition on all haram (mubah) actions which refer to prohibited or haram actions. 6The word haram in this context means prohibited or brings damage. In this way, the function of Saddu Dzariah itself is to prevent anything that causes harm or damage. In contrast to fathu dzariah, which is a basis for determining a law of action, namely actions that are recommended from the start because they bring benefit to those around them. These two branches of Islamic law sources will be used to analyze foreign workers entering Indonesia, giving rise to pros and cons among Indonesian society.

According to a review of Islamic law, phenomena such as the problems above raise questions that

https://nasional.kontan.co.id/news/jumlah-pekerja-asing-naik-1088-menjadi-95335-orang-sepanjang-2018 diakses 12 April 2023 pukul 23.43

https://www.voaindonesia.com/a/uu-di-indonesia-terlalu-banyak-tumpang-tindih-dan-tidaksinkron/5763310.html diakses 12 April 2023 pukul 23.52

<sup>&</sup>lt;sup>4</sup>ARIANI, Nevey Varida. Penegakan Hukum Terhadap Tenaga Kerja Asing Ilegal di Indonesia. *Jurnal Penelitian Hukum* p-ISSN, 2018, 1410: 5632.

<sup>5</sup>https://www.detik.com/hikmah/khazanah/d-6628281/4-sumber-hukum-islam-mulai-dari-al-quran-hingga-qiyas diakses 13 April 2023 pukul 00.21

<sup>&</sup>lt;sup>6</sup> Syarif, Makmur. Sadd Al-Dzari'ah Dan Pembaharuan Hukum Islam. *Jakarta: Iain-ib Pres*, 2006.





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need to be studied whether the existence of the Omnibus Law on the Job Creation Bill provides benefits or actually brings harm to the Indonesian nation. It is stated in Pancasila that the government must guarantee the welfare of Indonesian citizens. Don't let it just be for investment reasons, but make Indonesian citizens beg for work, even though it is far from the government's promise to improve the welfare of the Indonesian people. In fact, nowadays it can be clearly seen in every corner of big cities that the rulers or in quotation marks the employers in Indonesia are foreign nationals who are increasingly finding it easier to enter Indonesia to get work. Therefore, the current problems in Indonesia regarding the omnibus law of the Job Creation Bill which was inaugurated encouraged the author to carry out further writing and study in this journal with the title Analysis of Employment Law Policy for Foreign Citizens in Indonesia in the Job Creation Law Viewed from the Perspective of Islamic Sharia Rules. Fathu Dzariah Wa Saddu Dzariah.

The formulation of the problem in this research is as follows: How is the analysis of the Job Creation Law regarding foreign employment in Indonesia viewed from the perspective of Islamic law using the principles of Fathu Dzariah wa Saddu Dzariah? Meanwhile, the benefit of this research is to find out in detail regarding the Job Creation Bill in Indonesia regarding the large number of citizen workers entering Indonesia, whether it provides harm or benefits to the Indonesian state if studied using the rules of Fathu Dzariah wa Saddu Dzariah.

#### RESEARCH METHODS

The method in this research uses normative legal research or doctrinal law with a philosophical and historical approach as well as a conceptual approach. 8 This research uses a juridical approach to examine the policies of the Job Creation Law relating to the employment of foreign citizens in Indonesia. This type of research is descriptive research that uses and explains the phenomena that are currently occurring. This research uses secondary data originating from literature studies in the form of data originating from books, journals, literacy, and opinions of legal experts as well as several other sources that can support the success of this research.

# **RESULTS AND DISCUSSION**

## A. Explanation of Saddu Dzariah and Fathu Dzariah

Adz Dzariah is a singular noun which means path, or the means and causes for something to happen. Ibn Al Qayyim groups adz dzariah into four types:9

- 1. An action that is basically certain to cause damage (mafsadah).
- 2. An action that is basically permitted or recommended (mustahab), but is deliberately used as an intermediary for something bad to happen (mafsadah).
- 3. An action that is basically permissible but is not intentional to cause something bad (mafsadah), and in general the bad thing still happens even though it is not intentional. The bad (mafsadah) that might occur is greater than the good (maslahah) achieved.
- 4. An action that is basically permissible but can sometimes cause harm (mafsadah).

Meanwhile, to determine whether an act or policy is prohibited or not, because it contains a means (adz dzariah) to make another act prohibited, it can be seen from two main factors, namely:

1. The existence of a motive or goal that drives a person to carry out an action, whether the action will have an impact on something that is permissible or even an action that is forbidden.

<sup>&</sup>lt;sup>7</sup> Undang-undang Dasar Negara Republik Indonesia 1945

<sup>&</sup>lt;sup>8</sup> Dimyati, Khudzaifah, and Kelik Wardiono. "Metodologi Penelitian Hukum." Fakultas Hukum UMS, Surakarta, 2004.

<sup>&</sup>lt;sup>9</sup> Fawaid Imam. *"Konsep Sadd Al-Dzarî"ah dalam Perspektif Ibnu Al-Qayyim Al-Jauziyah"* . Jurnal Lisan Al-Hal. Vol. 13 No. 2. 2019.





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2. There are consequences that arise from actions without having to look at the motives or intentions of the perpetrator.

The Saddu Dzariah rule itself consists of two words, namely Saddu and Dzariah. Saddu itself means covering something that is defective or damaged and filling up holes, 10 while Dzariah means wasilah or the way for something to happen. 11

Shaykh Ibnu Qayyim Al-Jauzi believes that the meaning of Saddu Dzariahis The path or intermediary can be in the form of something that is prohibited or permitted. 12So the essence of understanding Saddu Dzariahis an effort to decide on an act that is considered permissible (permissible) so that greater harm (haram) does not occur.

Meanwhile, Fathu Dzariah's rules are a combination of two words, namely fathu and al dzariah. Fathu itself means opening, while al dzariah, which is a singular noun, means path. Meanwhile, if we look at the terminology, the word fath al dzariah is a way to determine the law for certain actions which are basically permissible. It is very clear that in the Islamic religion there is a goal which is to avoid damage (mafsadah) and create good, therefore if there is an action that is strongly suspected to be a means for good deeds to occur, then an action is ordered which is a means for that good deed, and that is what is called Fathu Dzariah's rule.

Fathu Dzariah's rules are not quite popular rules in society, unlike Saddu Dzariah's rules. Because this rule focuses on exceptions, exceptions which in the religion are prohibited or forbidden. Therefore, the use of this rule must be very careful.<sup>13</sup>

There are several 'ulama' who agree on the use of Fathu Dzariah's rules, as stated by Shaykhul Islam Ibn Taimiyyah "Something that is prohibited for reasons of sadd adz-Dzarî'ah, not because it is haram because of the original law, then that prohibition can be used to achieve the problem that bigger and does not cause a bigger mafsadah"14 then Ibnu Qayyim Al-Jauzi also argued "Something that is forbidden for reasons of sadd adz-Dzarî'ah, becomes permissible if there is a greater mashlahah"15This sentence is almost the same as what Imam as-Syathibi said, "The road to destruction must be closed if it does not result in greater benefits."16

# B. Analysis of the Job Creation Law regarding foreign workers uses the principles of Saddu Dzariah and Fathu Dzariah

The relationship between Saddu Dzariah and foreign workers can be reflected in a story, namely a Harbi infidel who lived deliberately in an Islamic country for some time. Once upon a time, a Harbi infidel encountered difficulties, therefore the ruling state was obliged to provide assistance regarding the matters needed to protect the Harbi infidel. This assistance is given because Islam is a religion that does not consider discrimination against a person's religion as long as the infidel lives in the area legally and behaves well. From the story above, an application can be taken, namely Saddu Dzariah with TKA, in accordance with the statements of Imam Syafii and Abu Hanifah regarding buying and selling using a credit system. The credit system is permitted provided that harmony in buying and selling is met. Therefore, if this is implied for foreign workers entering Indonesia, according to Saddu Dzariah, it is permissible if the conditions have been met, these conditions also contain dangerous things.

The term foreign worker means every person who comes from another country to Indonesia to work and earn wages, permanently or temporarily. The connection between foreign workers and Fathu Dzariah is that the use of foreign workers is something that is permissible if it brings benefits to

<sup>&</sup>lt;sup>10</sup> Al-Mishri, T. Muhammad bin Mukarram bin Manzhur al-Afriqi. *Lisan al-'Arab*. Juz 3 Hal. 207

<sup>&</sup>lt;sup>12</sup> Jauziyyah, Ibnu al-Qayyim. A'lam al-Muqi'in, *Beirut: Dar al-Kutub al-'Ilmiyyah*, 1996.

<sup>&</sup>lt;sup>13</sup> Abu Zahra, Muhammad. Malik Hayatuhu wa Ashruhu wa Arauhu wa Fighuhu. 1982.h. 354

<sup>&</sup>lt;sup>14</sup> Ibn Taymiyyah, Ahmad. Majmu'al-Fatawa. *Mahmud Qasim, Comp.*). *Riyadh*, 2005.

<sup>&</sup>lt;sup>15</sup> Al-Jauziyyah, Ibn Qayyim. I'lam al-Muwaqqi'in 'an Rabb al-'Alamin. *Beirut: Dar al-Jil*, 1973.. Juz 1 hal. 92

<sup>&</sup>lt;sup>16</sup> Al-Shatibi, Ibrahim Al-Gharnati. Al-Muwafaqat Fi Usul Al-Fiqh. *Beirut: Dar al-Kutub al-'Ilmiyyah*, 1975.





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Indonesia, but if otherwise, the use of foreign workers must be prohibited. In this case, the legal rule states that rejecting all harm takes priority over taking benefit.<sup>17</sup>

TKA is a subject in carrying out a job. Even though any work is legal, it is permitted by the state, but if it causes damage or harm, it is unlawful. 18So any work that results in causing disobedience to oneself, or to other people which results in causing harm is not permitted or in the Islamic religion is called work that is haram. For example, robbers, thieves, selling alcohol and selling illegal drugs are illegal. The damage resulting from this work can bring damage to oneself or others, this damage can be in the form of bodily, property or mental damage. On the other hand, if a job does not cause damage or is not dangerous to oneself or others, then the law is permissible and can even become obligatory. <sup>19</sup>

The government drafted the omnibus law not without a goal, one of the goals is that the government wants the inauguration of this omnibus law to be able to encourage growth in the economic sector, especially in the investment sector. Therefore, it contains easier regulations regarding business permits, relaxed regulations regarding the use of foreign workers entering Indonesia. All of this is very clearly stated in the new foreign worker regulations in PP 34 of 2021, part of a derivative of the Job Creation Law Number 11 of 2020, such as the use of foreign workers in startup companies, there is no longer a need for approval from the Minister if the foreign workers only work for a short period of time. . Another thing that makes the Indonesian workforce even more inflamed is the provision of certain positions for foreign workers. It is stated in the Job Creation Law that foreign workers are prohibited from holding positions dealing with personnel, while certain positions have been abolished. Even though Article 46 of the Manpower Law still contains the words prohibited from holding positions in dealing with personnel and/or certain positions. <sup>20</sup>These particular positions are regulated by Ministerial Decree. With the birth of these new regulations, it is very clear that outsourcing opportunities can be used for various types of work, no longer limited to just cleaning services, security services, or catering.

The increasing number of foreign workers entering this country, which has been made easier by the birth of the Job Creation Law, has certainly given rise to pros and cons among society. On the other hand, the government argues that it aims to improve the economy in the investment sphere, but the government does not take into account the impact of foreign workers entering Indonesia. It is very clear that the Indonesian population experiences a spike in the number of unemployed every year.

If examined from an Islamic perspective using the principles of adz dzariah, the government is including providing policies that are haram for purposes because the consequences resulting from an action is damage, even though it basically has a good purpose, then the punishment is not permissible.<sup>21</sup>This damage can be seen among job seekers in Indonesia, they are increasingly pushed aside by the arrival of foreign workers who can easily enter Indonesia, especially by making it easier for foreign workers to get permits to work. This has resulted in increasing levels of unemployment in Indonesia, increasing poverty rates every year, and increasingly worsening crime rates in every corner of Indonesian cities. Although the government has its own arguments regarding creating the Job Creation Law on the pretext that the value of investment in Indonesia will increase.<sup>22</sup>

When the omnibus law was published, the percentage showed that the benefit figures for society were lower compared to the negative figures. With comparisons like that, the situation in Indonesia

<sup>&</sup>lt;sup>17</sup> Muwaffaq, M. Maqashid Syariah Dalam Perspektif Ibnu Asyur. Attujjar: Jurnal Ekonomi Syariah, 2021, 6.1: 44-54..

<sup>&</sup>lt;sup>18</sup> Diantoro, Ahmad. TINJAUAN HUKUM ISLAM TERHADAP TENAGA KERJA ASING MENURUT PERATURAN PRESIDEN NOMOR 20TAHUN 2018 TENTANGPENGGUNAAN TENAGA KERJA ASING. 2020. PhD Thesis. UIN Raden Intan

<sup>&</sup>lt;sup>19</sup> Hambali, Hasanuddin. Kedudukan Al-Dzari'ah Dalam Hukum Islam. *Al Qalam*, 1997, 11.63: 10-19.

<sup>&</sup>lt;sup>20</sup> Undang-undang No.13 Tahun 2003 tentang ketenagakerjaan

<sup>&</sup>lt;sup>21</sup> Fawaid Imam.Loc.Cit

<sup>&</sup>lt;sup>22</sup> https://setkab.go.id/uu-cipta-kerja-sebagai-stimulus-pendorong-pertumbuhan-ekonomi-nasional-part-2/ diakses pada 15 April 2023 pada pukul 8:49





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will become even worse. The welfare of the people is just a sham for the government to cover the interests of a group of individuals who do not think about the welfare and progress of the Indonesian nation.

#### **CONCLUSION AND SUGGESTION**

#### Conclusion

The issuance of an omnibus law by the government which also regulates foreign workers entering Indonesia by making it easier to permit foreign workers to enter Indonesia has had quite a bad impact on the Indonesian people, because when foreign workers enter Indonesia easily it will become increasingly difficult. narrowing the world of employment opportunities for indigenous people. So the unemployment rate is increasing, poverty is increasing, crime is becoming more rampant. The reason given by the government is that the economy continues to develop and the value of investment increases, but the government pays little attention to how many Indonesians are still scrambling to find jobs. With the existence of a phenomenon like this, Islamic law provides confirmation that the policy implemented by the government regarding the new regulations governing foreign workers to enter Indonesia more easily is something that causes harm, so it will be prohibited on the basis of Saddu Dzariah because it will cause more harm, compared to the benefits recommended based on Fathu Dzariah.<sup>23</sup>Even though the government has good goals for the Indonesian economy, the bad impacts it causes are more than the good impacts for society.

#### Suggestion

The Job Creation Law will be even better if it limits the number of foreign workers entering Indonesia, selects foreign workers who enter Indonesia by having competent skills and adequate knowledge so as to set an example for the Indonesian workforce to be more advanced, not the opposite of the rough freelance workers who imported into Indonesia. If casual laborers are brought in from outside Indonesia, it is considered unwise because job seekers in Indonesia with low levels of education still really need these jobs. Don't do the opposite, namely give the widest possible leeway to obtain permission for foreign workers to enter Indonesia. Giving positions to foreign workers to get job positions in Indonesia is a bad thing that should not be embedded in labor regulations in Indonesia.

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<sup>&</sup>lt;sup>23</sup> Misranetti, Misranetti. Sadd Al-Dzari'ah Sebagai Suatu Hukum Metode Istinbat Hukum Islam. *Jurnal An-Nahl*, 2020, 7.1: 51-75.





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