



## Corporate Crime in Smuggling Illegal Foreign Workers in Indonesia

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Mobilization of workers between countries easily occurs in the era of globalization causing foreign workers (TKA) to enter Indonesia easily. The basic philosophy of using TKA is needed in the context of increasing investment, exports, transferring technology and transferring expertise to Indonesian Citizen Workers (TKI), as well as expanding employment opportunities. Therefore, in accordance with the Job Creation Law No.11 of 2020 the Employment Cluster in Article 45 paragraph (1) it is emphasized that in hiring foreign workers, employers are required to appoint migrant workers as companions for foreign workers and carry out training for technology transfer and skill transfer from foreign workers. to the TKI companion. The research method used in this study is the standard legal approach. This approach is taken to be able to bring about changes or changes to the various theories of the legal discipline through a scientific process. Legal research is research done by examining library materials or basic legal documents. The research specification used in this study is a descriptive analytical method that explains, describes, and relates legal regulations and theories to current issues. The researcher will read and organize all legal documents collected. In this research, conclusions are drawn using the deductive method, that is, drawing conclusions from a general problem to a specific problem to serve as a reference to answer related research problems. to the classification of foreign workers as foreign workers, illegal enforcement of laws, and sanctions for corporate crimes against companies that illegally traffic in foreign labor in Indonesia. The results of the study show that the category of illegal foreign workers are foreign nationals who enter and work in the territory of the Republic of Indonesia without following the migration regulations and the rules for using foreign workers in force in Indonesia and any company that is proven to have committed a corporate crime. smuggling of illegal foreign workers must be strictly processed by imposing criminal sanctions in the form of imprisonment, fines and revocation of company licenses.

### 1. Introduction

The development of globalization encourages capital movement and investment flows to many parts of the world; There is also population migration or labor movement between countries. Labor mobility that occurs

as a result of investments made in other countries often requires direct supervision by the owner/investor. Mobilizing labor between countries takes place easily in the era of globalization, creating conditions for foreign workers to easily enter Indonesia. The increase of foreign workers (TKA), especially those from China entering Indonesia, poses problems related to their activities on Indonesian territory.<sup>1</sup>

In principle, Presidential Decree No. 75 of 1995 on the employment of foreign immigrant workers requires preference for the employment of Indonesian workers in available fields and types of work, unless the fields and types of work are not available. other type of work. or no job opportunities. Complete. by Indonesian workers, this country is allowed to recruit foreign workers for a certain period of time. This provision hopes that Indonesian workers can apply the skills possessed by the relevant foreign worker and apply them on their own without the participation of the foreign worker. Therefore, the use of foreign workers is done selectively to make the most of Indonesian workers.<sup>2</sup>

The basic philosophy of using foreign workers is needed in the context of increasing investment, exports, transferring technology and transferring expertise to Indonesian Citizen Workers (TKI), as well as expanding employment opportunities<sup>3</sup>. Therefore, in accordance with the Job Creation Law No.11 of 2020 the Employment Cluster in Article 45 paragraph (1) it is emphasized that in hiring foreign workers, employers are required to appoint migrant workers as companions for foreign workers and carry out training for technology transfer and skill transfer from foreign workers. to accompanying migrant workers.

The opening of the door for foreign workers to enter Indonesia, not only brings in legal foreign workers, but also serves as an excuse or camouflage for illegal immigrants to enter Indonesia and work as illegal foreign workers. China is considered the largest country of origin for foreign workers in

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<sup>2</sup> Henni Indriani Simanungkalit. (2020). "Pertanggungjawaban Pidana Pelaku Orang Yang Melakukan Penempatan Tenaga Kerja Migran Indonesia Tanpa Ijin (Studi Putusan Pengadilan Nomor: 1074/Pid. SUS/2018/PN. Mdn)".

<sup>3</sup> Nur Hidayatul Fithri. (2022). "Kesejahteraan Dan Penerapan Keadilan Bagi Pekerja Dalam Undang-Undang Cipta Kerja Klaster Ketenagakerjaan". *Wijaya Putra Law Review*. 1(2). 120-29.

Indonesia, followed by Japan, South Korea and India. The large number of foreign investment projects using new Chinese technology has caused the number of foreign workers in the country to be quite large, actually reaching nearly half of the total number of foreign workers in May 2019. 2022, an increase of 8.3 thousand people (9.4%). ), bringing the total number to 96.57 thousand workers. end of May 2022.

The existence of illegal foreign workers will certainly cause polemics which can lead to security, political and economic instability in Indonesia<sup>4</sup>. Therefore, it must be done to prevent, supervise and control the entry of illegal foreign workers. the existence of illegal foreign workers is a problem that must be faced by workers in Indonesia in addition to the discrepancy between wages and provincial and district/city minimum wages and unilateral termination of employment. This is because the illegal foreign workers consist of workers who do not have the skills to have the skills that are already owned by Indonesian workers. The lack of special skills possessed by illegal foreign workers has resulted in competition with Indonesian workers to get jobs that do not require high skills.

Illegal foreign workers are generally in the form of individuals who come to Indonesia using a tourist visa or there are also those who have temporary residence permits due to marriages with Indonesian citizens but before two years have carried out business activities or worked in Indonesia. Usually these illegal foreign workers work in informal sectors such as part-time foreign language teachers, commercial disc jockeys at private parties or nightclubs, translators and so on. However, since the issuance of Presidential Regulation Number 21 of 2016 concerning Visa Free Visits, there have been cases of a group of illegal foreign workers entering Indonesia and working in the formal sector, such as in factories, smelters, plantations and mining.

Considering the areas of work performed by the group of illegal foreign workers, it is suspected that this company is involved in the trafficking of illegal foreign workers to Indonesia. This can be demonstrated by the large number of groups of foreign workers working at some foreign investment companies in Indonesia, such as the case of illegal foreign workers from

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<sup>4</sup> Urip Giyono and Ratna Puspitasari. (2022). "Kajian Etnisitas Dan Ketenagakerjaan Terkait Peraturan Presiden Nomor 20 Tahun 2018 Terhadap Masuknya Tenaga Kerja China Di Indonesia." *Jurnal Jendela Hukum*. 9(1). 34-51.

Malaysia recruited by PT. Oil power industry from Sumber Jaya to Dumai. Allegations of the company's connection with the smuggling of illegal foreign workers because based on the provisions of Article 63 Paragraph (1) foreigners who have a residence permit in the territory of the Republic of Indonesia must have a guarantor, besides that the company also provides facilities such as pickup, residence, and does not report the presence of foreign workers illegal in the business environment. If it is proven that a company is a private legal entity that is involved in the illegal trafficking of foreign labor then the action is part of a corporate crime and, under personal law, public company may be held criminally responsible.

Based on the above description, the authors would like to further research corporate crime related to their participation in illegal foreign labor trafficking in Indonesia. The issue of this study is the classification of foreign workers as illegal foreign workers and the application of corporate crime sanctions against companies that traffic in illegal foreign workers in Indonesia.

## **2. Method**

The research method used in this study is the standard legal approach. This approach is taken to be able to bring about changes or changes to the various theories of the legal discipline through a scientific process. Legal research is research done by examining library materials or basic legal documents. In normative legal scholarship, law is often conceptualized as what is written in statute (law on the books) or law is conceptualized as a rule or norm that constitutes the norm for human behavior considered suitable or appropriate<sup>5</sup>. Library research is the single method used in normative legal research.

This information can be obtained from laws, regulations and articles. It is then described and linked so that it can be presented in a more systematic way, in response to the issues raised. The research specification used in this study is a descriptive analytical method that explains, describes, and relates legal regulations and theories to current issues. The researcher will read and organize all legal documents collected.<sup>6</sup> In this study, conclusions are

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<sup>5</sup> Zainal Asikin. (2016). "Pengantar Metode Penelitian Hukum."

<sup>6</sup> Ani Purwati, "Metode Penelitian Hukum Teori & Praktek" (Jakad Media Publishing, 2020).

drawn using the deductive method, namely drawing conclusions from a general problem to a specific one so that it becomes a reference for answering the problems in research relating to the categorization of foreign workers as foreign workers the application of illegal and sanctions against corporate crimes against companies that carry out smuggling of illegal foreign workers in Indonesia<sup>7</sup>.

### **3. Main Heading of the Analysis or Results**

#### **3.1 Categorization of Foreign Workers as Illegal Foreign Workers**

Any person who renders services on a regular basis and receives a regular salary for the services rendered by him in a subordinate relationship to the employer, the service provider will be called a labor. In Article 1, Point 1 of Regulation No. 34 of 2021 of the Government on the employment of foreign workers, foreign workers are foreign citizens with visas for the purpose of working in the territory of the Republic of Indonesia.

As stipulated in Article 49 of Law Number 13 of 2003 concerning Manpower, foreign workers are a source of additional foreign exchange for the state due to compensation payments for each foreign worker employed. The amount of compensation given to foreign workers in Indonesia is US\$100. This compensation is given in the context of implementing the Transfer of Knowledge from foreign workers to Indonesian workers, employers are required to provide education and training for accompanying workers. This compensation payment is exempted for employers of foreign workers who are government agencies, representatives of foreign countries, international agencies, social institutions, religious institutions, and certain positions in educational institutions.

Regulation of the Minister of Manpower Number 20 of 2018 related to procedures for using foreign workers Article 4, paragraph (1), relating to all employers of foreign workers must give priority to the use of Indonesian workers in all types of available positions. The above laws and regulations aim to prioritize Indonesian workers over foreign workers. However, in reality, currently in Indonesia, we know that some foreign investors who want to invest in Indonesia use workers from the investor's home country.. This indirectly harms our country. The entry of foreign investors into

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<sup>7</sup> Zainuddin Ali. (2011). *Metode Penelitian Hukum*. Sinar Grafika.

Indonesia should be a breath of fresh air for the Indonesian nation's economy in terms of providing jobs that contribute to employment so that it reduces the percentage of the unemployment rate in Indonesia.

To achieve the development of the Indonesian state, not only human resources are needed, but also funds are needed. It is not uncommon for the necessary expenses for development to be obtained through foreign investment in Indonesia. However, some investing countries, such as the People's Republic of China, require the use of foreign workers from developing countries or projects in which they invest. as a mandatory condition for them to wish to invest in Indonesia. This is the driving force motivating the government of the Republic of Indonesia to open the door for foreign workers to enter Indonesia.

As for foreign nationals who want to work in Indonesia, they must meet the requirements set out in the laws and regulations that apply in Indonesia. Such as the entry requirements for foreign citizens regulated in Law Number 6 of 2011 concerning Immigration where every foreign citizen entering Indonesia must have travel documents, identification and visas, go through immigration officer inspection, and get an entry sign from immigration officers. (Article 8, Article 9, Article 10) For foreign nationals who wish to work in Indonesia, they must have a limited stay visa (Article 39).

Based on the provisions of Article 4 Paragraph (2) Presidential Regulation Number 20 of 2018 concerning the use of Foreign Workers, employers must prioritize the use of local workers for each position rather than foreign workers and foreign workers may only be used in certain positions if local workers not qualified for this position. This rule is again strengthened in Article 2 of Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers. From the two laws and regulations, it can be concluded that the use of foreign workers is actually to improve the quality of local workforce human resources through skills training or technology transfer by foreign workers.<sup>8</sup>

In the provisions of Article 12 Paragraph (1) of Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers, job providers

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<sup>8</sup> Nurhidayati Nurhidayati. (2019). "Perizinan Tenaga Kerja Asing, Kebijakan Dan Implementasinya." *Jurnal Khatulistiwa Informatika*. 3(2). 241-48.

must submit an application for Ratification of Plans for the Use of Foreign Workers (RPTKA) to the minister or authorized official. In addition, there are also restrictions regarding the use of foreign workers, such as:

- 1) Individual employers are prohibited from employing foreign workers (Article 9);
- 2) Foreign workers are prohibited from holding multiple positions (Article 10)
- 3) Foreign workers may not fill positions that manage personnel (Article 11).

It can be concluded that those who are categorized as illegal foreign workers are foreign nationals who enter and work in the territory of the Republic of Indonesia without following the migration regulations and the rules for using foreign workers that apply in Indonesia, such as:

- 1) Foreign workers work without having a limited stay visa;
- 2) Foreign workers who work for individuals;
- 3) Foreign workers who fill personnel positions;
- 4) Foreign workers who fill positions that can be done by local workers (security, unskilled laborers, cleaning services, and so on); and
- 5) Foreign workers who are employed by companies without reporting Plans for the Use of Foreign Workers to the minister or authorized official.

Manpower policies including the policy on the use of foreign workers in responding to multi-dimensional changes aim at the principle of selectivity (selective policy) and one gate (one gate policy), so that the interests of protecting workers can be carried out without ignoring the principles of globalization and the implementation of regional autonomy. Law Number 13 of 2003 concerning; Employment Chapter VIII; Use of TKA, Article 42 Paragraph (1) and Article 43 Paragraph (1) that the Permit Authority to Employ TKA (IMTA) and ratification of Plans for Employment of Foreign Workers (RPTKA) are the authority of the Minister of Manpower and Transmigration.

Currently, a number of regulations have been issued to implement the use of foreign workers as required by law while taking into account the benefits of globalization, regional autonomy and democratization, leading to Increase

employment services by placing as many workers as possible. There may be continued expansion of employment opportunities through more directed and controlled use of foreign labor with reasonable and auspicious signs. While the country's development still needs foreign capital or investment, technology and experts.

Regarding the use of foreign workers, the domestic labor market cannot fully provide qualified workers in both quantity and quality, so the policy of using foreign workers must be consistent with the protection of workers. Indonesia through providing employment opportunities in accordance with the provisions of the 1945 Constitution and its amendments, specifically Article 27, paragraph (2), in which ; Every citizen has the right to work and live decently in the service of humanity and Article 28 D(2) provides that everyone has the right to work and to receive just and equitable remuneration and treatment in employment relations dynamic. This means that the use of foreign workers must provide as many benefits as possible for the benefit of Indonesian workers through business expansion efforts that will have a positive impact on the creation and expansion of job opportunities and the transfer of technology from foreign workers to Indonesian workers.

### **3.2 Sanctions for Corporate Crime Against Companies That Smuggle Illegal Foreign Workers in Indonesia**

The role of businesses in developing their activities plays an important role in the development of the country and makes a great contribution, especially in the context of the development of economic sectors. The role of business in promoting economic growth is ensured through state revenues in the form of taxes, foreign exchange and by providing employment opportunities to the community. However, companies often engage in deviant or criminal acts in their operations with different operating methods. Therefore, these deviant (criminal) acts are committed by a legal entity (company) or an association and not just by individuals as in conventional crimes.

Corporate crime is essentially organized crime, occurring within the framework of the relationship between the board of directors, managers and managers on the one hand, and between the parent company, branches and



subsidiaries on the one hand. Corporate crimes are generally carried out by people with high social status by taking advantage of certain opportunities and positions as well as in a collective way and with a subtle modus operandi, which is difficult to compare with crimes committed by individuals. The characteristics of criminal acts by corporations are of course different from the characteristics of crimes committed by humans, because the two subjects of criminal law (humans and corporations) have differences.

Corporate crime is essentially organized crime, occurring within the framework of the relationship between the board of directors, managers and managers on the one hand, and between the parent company, branches and subsidiary, 'elsewhere'. Corporate crimes are often committed by people of high social status by taking advantage of certain opportunities and positions as well as in collective ways and sophisticated tricks, which can hardly be compared with criminals. performed by individuals. The characteristics of crimes committed by corporations are of course different from the characteristics of crimes committed by people, because the two subjects of criminal law (people and corporations) are different.<sup>9</sup> When viewed from its characteristics, there are fundamental differences between corporate crime and conventional (traditional) crime in general, including:

1. Corporate crimes are difficult to detect (low detection ability), are carried out secretly, involve professional expertise and use complex organizational systems and victims often do not know the losses they incur. to suffer;
2. Crime is very complex (complicated) because it is always associated with acts of lying, fraud, theft and is often associated with scientific, technological, financial, legal, and organized activities. involving many people and lasting many years;
3. There is greater diffusion of responsibility due to the complexity of the organization;
4. Proliferation of abusive practices such as pollution and fraud;

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<sup>9</sup> Corporations do not have souls and minds, unlike humans who have these two characteristics. For example, humans can commit murder and rape, while corporations cannot commit these acts (which humans can do). Then, humans can also enter into a marriage bond, while corporations cannot do that.

5. Obstacles in detection and prosecution (detection and prosecution) due to unequal professionalism between law enforcement officers and offenders;
6. Unclear regulations (vague laws) often lead to damage in law enforcement;
7. Dual status of the person committing the crime. It must be admitted that people who commit crimes generally do not violate laws or regulations, but these actions are actually violations of the law.

Marshaal B. Clinard and Peter C. Yeager put forward the criteria for when criminal sanctions should be directed at corporations, so that if these criteria are not present, it is better to use civil sanctions, while the criteria referred to are as follows:

1. extent of loss to the public (extent of loss to the public);
2. the level of sophistication of the company's senior managers (level of involvement);
3. time of violation;
4. frequency of violations by the company;
5. evidence of intent to rape;
6. There is evidence of blackmail as in the case of bribery (there is evidence of blackmail as in the case of bribery);
7. media popularity;
8. legal precedent;
9. the company's history of serious violations (the company(s)' history of serious violations as a repeat violator);
10. deterrent potential;
11. Freedom of cooperation is expressed by society.

Munir Fuady also said that a corporate crime has certain characteristics, among the characteristics of corporate crime are:

1. The corporate crime brings profit (economical or not) or is carried out with economic motives for the company;
2. The corporate crime has negative consequences for other people or has widespread negative consequences for society. For example, crimes in the environmental sector that cause widespread harm to society;
3. Corporate crimes are usually carried out in sophisticated and unconventional modes. For example, it is done through financial engineering that is difficult to detect.

In this regard, David O. Friedrichs defines corporate crime as a crime committed by corporate officials or a limited liability company (PT) for the benefit of the corporation or a crime committed by the corporation itself (offences committed by corporate officials for their corporation or the offenses of the corporation itself). Meanwhile, Marshal B. Clinard and Peter C. Yeager as quoted by Setiyono provide the definition of corporate crime as: "A corporation crime is any act committed by corporation that is punished by the state, regardless of whether it is punished under administrative, civil, or criminal law. This broadens the definition of crime beyond the criminal law, which is the only governmental action for ordinary offenders" Corporate crime is one of the new paradigms in today's legal world, so that the laws and regulations have not explicitly stated the boundaries of corporations and how they are responsible.)

1. According to John Braithwaite quoted by Sally S. Simpson, who stated that corporate crime is "conduct by a business, or by employees acting on behalf of a business, that is prohibited by law and punishment" or loosely translated as "the behavioral conduct of a company". the company or its management (employees) acting on behalf of the company, which is prohibited and punishable by law". In John Braithwaite's opinion, then, criminal acts committed by, for and/or on behalf of commercial entities (companies) include at least this:
2. Illegal acts of companies and their agents differ from criminal acts of lower socio-economic classes in terms of administrative procedures. Therefore, what is classified as corporate crime does not only refer to criminal acts within the meaning of the Penal Code but also includes acts that violate civil and state administrative laws;
3. Companies (as individual legal entities "legal entities") and their representatives are considered perpetrators of crimes (as illegal actors), which in their judicial activity depends, inter alia, on the crime committed, the rules and the quality of evidence and prosecution. ;
4. Corporate crime is not only motivated by personal gain but also by meeting the needs and achieving the interests of the organization. It is possible that these dynamics are also supported

by the organization's internal performance norms and group culture.

J.E. Sahetapy stated that corporate crime is not a new thing, but only the packaging, forms and manifestations are new. Corporate crime has existed since more than three thousand years ago or in the 24th century AD in Egypt. In the past in Greece, corporate crimes also occurred, for example when the Alcmaenoids who were entrusted with building a house of worship with marble were replaced with cement covered with marble. According to Muladi, corporate crimes can be accounted for based on the following matters:<sup>10</sup>

1. On the basis of an integralistic philosophy, namely everything should be measured on the basis of balance;
2. On the basis of kinship;
3. To eradicate anomie of success (success without rules);
4. For consumer protection; And
5. For technological advancement.

The first corporate criminal sanctions for companies that carry out illegal foreign worker smuggling can be seen from the perspective of immigration law, namely:<sup>11</sup>

1. Foreigner smuggling, whoever brings foreign nationals without valid documents into Indonesian territory with the aim of seeking profit, shall be punished for committing human smuggling with a minimum imprisonment of 5 years and a maximum of 15 years with a minimum fine of five hundred million rupiah and a maximum of one billion and five hundred million rupiah (Article 120 of the Immigration Law);
2. If it is proven that they have assisted the entry of illegal foreign workers by producing fake documents, they will be punished with imprisonment for 5 years and a fine of five hundred million rupiah (Article 121 of the Immigration Law);
3. anyone who orders or gives the opportunity to carry out activities that are not in accordance with the residence permit will be subject to

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<sup>10</sup>Zulkarnain. (2011). "Hambatan Penegakan Hukum Terhadap Pelaku Kejahatan Korporasi Dalam Sistem Peradilan Indonesia", (Menunggu Peran Mahkamah Konstitusi dalam Upaya Pemberantasan Kejahatan Korporasi). *Jurnal Konstitusi*. IV(2). 69.

<sup>11</sup> Wilson Petrus Napitupulu. (2020). "Analisis Terhadap Tindak Pidana Penyeludupan Manusia Keluar Negeri Untuk Bekerja Sebagai TKI Illegal Di Wilayah Hukum Polres Bengkalis" (Universitas Islam Riau).

imprisonment for 5 years and a fine of five hundred million rupiah (Article 122 of the Immigration Law).

4. any person who provides protection, hides, provides accommodation, provides livelihood, provides employment to a foreigner who is suspected of illegally entering the territory of the Republic of Indonesia or whose residence permit has expired, shall be punished with imprisonment for a minimum of 2 years and a maximum of 3 years with a fine of two hundred million rupiah (Article 124 of the Immigration Law).

Then in Article 36 of the Government Regulation concerning the Use of Foreign Workers, every employer who does not report the Approval of the Plan for the Use of Foreign Workers will be given a sanction in the form of a fine, temporary suspension of the Approval of the Plan for the Use of Foreign Workers, or the revocation of the Approval of the Plan for the Use of Foreign Workers.

#### **4. Conclusion**

The category of illegal foreign workers are foreign nationals who enter and work in the territory of the Republic of Indonesia without following the migration regulations and the rules for using foreign workers that apply in Indonesia, such as foreign workers working without having a limited stay visa, foreign workers who work for individuals, foreign workers who fill personnel positions, foreign workers who fill positions that can be done by local workers (security, unskilled laborers, cleaning services, and so on); and Foreign workers who are employed by companies without reporting Plans for the Use of Foreign Workers to the minister or authorized official. The first corporate criminal sanctions for companies that carry out illegal foreign worker smuggling can be seen from the perspective of immigration law, namely, foreigner smuggling, anyone who brings foreign nationals without valid documents into Indonesian territory with the aim of seeking profit, is punished for committing people smuggling with imprisonment of at least 5 years and a maximum of 15 years and a fine of at least five hundred million rupiah and a maximum of one billion and five hundred million rupiah (Article 120 of the Immigration Law). If it is proven that they have assisted the entry of illegal foreign workers by producing fake documents, they will be sentenced to 5 years in prison and a fine of five hundred million rupiah

(Article 121 of the Immigration Law). Anyone who orders or gives the opportunity to carry out activities that are not in accordance with the residence permit will be subject to imprisonment for 5 years and a fine of five hundred million rupiah (Article 122 of the Immigration Law). Anyone who provides protection, hides, provides accommodation, provides livelihood, provides work to a foreigner who is suspected of illegally entering the territory of the Republic of Indonesia or whose residence permit has expired, shall be punished with imprisonment for a minimum of 2 years and a maximum of 3 years with a fine of two hundred million rupiah (Article 124 of the Immigration Law). Then in Article 36 of the Government Regulation concerning the Use of Foreign Workers, every employer who does not report the Approval of the Plan for the Use of Foreign Workers will be given a sanction in the form of a fine, temporary suspension of the Approval of the Plan for the Use of Foreign Workers, or the revocation of the Approval of the Plan for the Use of Foreign Workers. The government must be sovereign economically, politically and scientifically so that in the future the Republic of Indonesia can be independent and does not require foreign investment which requires the use of foreign workers so that the entry of illegal foreign workers can be minimized. Any company proven to have committed a corporate crime of smuggling illegal foreign workers must be strictly processed by imposing criminal sanctions in the form of imprisonment, fines and revocation of the company's license.

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