

Harmonizing Gorontalo Regional Regulations in Light of Constitutional Court Decision No. 168/PUU-XXI/2023: A Regional Approach to Foreign Worker Governance

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Abstract

The governance of foreign workers has become an increasingly significant constitutional issue in Indonesia following Constitutional Court Decision No. 168/PUU-XXI/2023, which reaffirmed the need to balance investment interests with the State's constitutional obligation to protect Indonesian workers. The Decision has not only reshaped national labour policy but has also necessitated regulatory adjustments at the regional level as part of the implementation of Indonesia's decentralized governance framework. This study examines the constitutional implications of the Decision for the harmonization of Gorontalo Provincial Regulations governing foreign workers and formulates a regulatory reform framework consistent with constitutional standards. Employing normative legal research, the study applies statutory, conceptual, and case approaches through an analysis of the 1945 Constitution of the Republic of Indonesia, Law No. 6 of 2023 on Job Creation, Law No. 23 of 2014 on Regional Government, Constitutional Court Decision No. 168/PUU-XXI/2023, and Gorontalo Provincial Regulations No. 1 of 2022 and No. 8 of 2016. The findings reveal that the existing regional regulatory framework in Gorontalo remains predominantly administrative in orientation and has yet to fully internalize the constitutional standards established by the Constitutional Court, particularly concerning the prioritization of Indonesian workers, mandatory counterpart workers, measurable knowledge and technology transfer, integrated labour supervision, and effective enforcement mechanisms. The study concludes that the harmonization of regional regulations should extend beyond formal legislative conformity toward the substantive implementation of constitutional principles through a regulatory framework capable of strengthening legal certainty, protecting the national workforce, enhancing regional governmental accountability, and sustaining a conducive investment climate within Indonesia's decentralized legal system.

Keywords: Constitutional Harmonization; Foreign Workers; Regional Regulations; Constitutional Court; Decentralization.

Abstrak

Pengaturan tenaga kerja asing menjadi isu konstitusional yang semakin penting di Indonesia setelah Putusan Mahkamah Konstitusi Nomor 168/PUU-XXI/2023 yang menegaskan perlunya keseimbangan antara kepentingan investasi dan kewajiban negara dalam memberikan perlindungan konstitusional kepada tenaga kerja Indonesia. Putusan tersebut tidak hanya memengaruhi kebijakan ketenagakerjaan nasional, tetapi juga menuntut penyesuaian regulasi di tingkat daerah sebagai bagian dari implementasi prinsip desentralisasi. Penelitian ini bertujuan menganalisis implikasi konstitusional putusan tersebut terhadap harmonisasi Peraturan Daerah Provinsi

Gorontalo mengenai tenaga kerja asing serta merumuskan arah reformasi regulasi yang sesuai dengan standar konstitusional. Penelitian menggunakan metode hukum normatif dengan pendekatan peraturan perundang-undangan, konseptual, dan kasus melalui analisis terhadap UUD NRI Tahun 1945, Undang-Undang Nomor 6 Tahun 2023 tentang Cipta Kerja, Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah, Putusan Mahkamah Konstitusi Nomor 168/PUU-XXI/2023, serta Peraturan Daerah Provinsi Gorontalo Nomor 1 Tahun 2022 dan Nomor 8 Tahun 2016. Hasil penelitian menunjukkan bahwa regulasi daerah di Provinsi Gorontalo masih berorientasi pada aspek administratif dan belum sepenuhnya menginternalisasi standar konstitusional, khususnya terkait prioritas tenaga kerja Indonesia, kewajiban tenaga kerja pendamping, alih pengetahuan dan teknologi yang terukur, pengawasan terpadu, serta mekanisme penegakan hukum yang efektif. Penelitian ini menegaskan bahwa harmonisasi peraturan daerah harus diarahkan pada implementasi substantif prinsip-prinsip konstitusi melalui kerangka regulasi yang mampu memperkuat kepastian hukum, perlindungan tenaga kerja nasional, akuntabilitas pemerintahan daerah, dan keberlanjutan iklim investasi dalam sistem hukum Indonesia yang terdesentralisasi.

Kata Kunci: Harmonisasi Konstitusional; Tenaga Kerja Asing; Peraturan Daerah; Mahkamah Konstitusi; Desentralisasi.



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Introduction

The governance of foreign workers has emerged as one of the most challenging issues in contemporary labour regulation, particularly in developing countries seeking to balance economic competitiveness with constitutional commitments to social justice and employment protection. The acceleration of globalization, international investment, and transnational labour mobility has substantially increased the demand for skilled foreign professionals across strategic economic sectors. While the presence of foreign workers contributes to technology transfer, managerial innovation, and industrial productivity, it simultaneously raises concerns regarding employment opportunities for domestic workers, regulatory coherence, and governmental accountability. According to the International Labour Organization (ILO), labour migration policies should not merely facilitate labour mobility but must also ensure equitable labour protection, institutional transparency, and sustainable workforce development (International Labour Organization, 2019, 2024). Consequently, legal systems increasingly face the challenge of reconciling investment facilitation with constitutional obligations to protect national workers without undermining international economic cooperation. In many jurisdictions, including several emerging economies in Asia, foreign worker governance has therefore evolved beyond administrative licensing into a broader constitutional and regulatory issue involving labour rights, decentralization, legal harmonization, and public governance (Organisation for Economic Co-operation and Development (OECD), 2024). This transformation demonstrates that effective labour governance

depends not only upon national legislation but equally upon the capacity of sub-national governments to implement constitutional norms consistently within their respective jurisdictions.

Indonesia reflects these global dynamics through significant legal reforms in its employment regulatory framework, particularly following the enactment of the Job Creation Law and its subsequent constitutional review by the Constitutional Court of Indonesia. Employment regulation has increasingly become an arena in which constitutional principles, economic policy, labour protection, and regional autonomy intersect. The Constitutional Court, through Decision No. 168/PUU-XXI/2023, reaffirmed that employment policies must remain consistent with constitutional guarantees protecting Indonesian workers while recognizing the legitimate role of foreign workers in sectors requiring specific expertise (Decision No. 168/PUU-XXI/2023, 2023; Law No. 6 of 2023 (Job Creation Law), 2023). Rather than prohibiting the employment of foreign workers, the Court emphasized proportional regulation through prioritization of Indonesian workers, knowledge transfer obligations, limited occupational placement, and strengthened governmental supervision. These constitutional principles require not only legislative adjustment at the national level but also regulatory harmonization across regional governments responsible for implementing employment policies within Indonesia's decentralized governance system (Law No. 23 of 2014 on Regional Government, 2014; The Indonesian Constitution, 1945). Consequently, the legal implications of the Constitutional Court's decision extend beyond statutory interpretation and raise broader questions regarding the constitutional responsibilities of provincial governments in aligning regional regulations with evolving national constitutional standards.

The governance of foreign workers has emerged as one of the most challenging issues in contemporary labour regulation, particularly in developing countries seeking to balance economic competitiveness with constitutional commitments to social justice and employment protection. The acceleration of globalization, international investment, and transnational labour mobility has substantially increased the demand for skilled foreign professionals across strategic economic sectors. While the presence of foreign workers contributes to technology transfer, managerial innovation, and industrial productivity, it simultaneously raises concerns regarding employment opportunities for domestic workers, regulatory coherence, and governmental accountability. According to the International Labour Organization (ILO), labour migration policies should not merely facilitate labour mobility but must also ensure equitable labour protection, institutional transparency, and sustainable workforce development (Kadaryanto et al., 2025; Law No. 23 of 2014 on Regional Government, 2014). Consequently, legal systems increasingly face the challenge of reconciling investment facilitation with constitutional obligations to protect national workers without undermining international economic cooperation. In many jurisdictions, including several

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Despite the growing body of scholarship on foreign worker regulation in Indonesia, existing studies remain fragmented in both their analytical focus and conceptual orientation. Previous research has primarily examined the socio-economic consequences of foreign workers for domestic employment, the effectiveness of administrative licensing systems, labour inspection, and the implementation of knowledge transfer through Indonesian counterpart workers (International Labour Organization, 2024). While these studies provide valuable insights into employment governance, they generally approach foreign worker regulation from the perspectives of labour law compliance or administrative supervision. Consequently, insufficient attention has been devoted to the constitutional implications of judicial review decisions, particularly regarding how

Constitutional Court judgments reshape the normative relationship between national legislation and regional regulatory authority. More importantly, the existing literature rarely examines whether regional governments possess adequate constitutional and statutory authority to reconstruct regional legal instruments following landmark constitutional adjudication. This omission leaves unresolved an important question concerning the role of regional legislation as a constitutional instrument for implementing judicial decisions within Indonesia's decentralized legal system.

This study argues that Constitutional Court Decision No. 168/PUU-XXI/2023 should not merely be understood as an interpretation of employment legislation but rather as a constitutional benchmark for evaluating the legitimacy and coherence of regional labour governance. Accordingly, the analysis is situated within the intersection of three complementary theoretical perspectives: legal protection theory, decentralization theory, and regulatory harmonization. Legal protection theory provides the normative foundation for assessing whether regional regulations adequately safeguard the constitutional rights of Indonesian workers (Gunawan & Mashari, 2024; Kalsum et al., 2023). Decentralization theory explains the constitutional distribution of governmental authority and clarifies the extent to which provincial governments may formulate regulatory responses without exceeding the limits established by national law (Philipus M. Hadjon, 1987; Rahardjo, 2014). Meanwhile, regulatory harmonization offers an analytical framework for evaluating vertical consistency between Constitutional Court decisions, national legislation, and regional regulations, thereby ensuring legal certainty and institutional coherence within a unitary constitutional system. By integrating these theoretical perspectives, the present study moves beyond descriptive legal analysis toward a constitutional assessment of regional regulatory reform.

Against this background, the present research investigates the extent to which Gorontalo's regional regulations governing foreign workers conform to the constitutional standards established by Constitutional Court Decision No. 168/PUU-XXI/2023. Specifically, it addresses two interrelated questions. First, why is the harmonization of Gorontalo's regional regulations constitutionally necessary following the Constitutional Court's decision? Second, what substantive regulatory framework should be incorporated into regional legislation to strengthen the governance of foreign workers while ensuring the constitutional protection of Indonesian workers? Addressing these questions requires more than identifying normative inconsistencies; it requires evaluating the constitutional functions of regional legislation within Indonesia's decentralized governance system and formulating a regulatory framework capable of reconciling investment interests with labour protection, constitutional supremacy, and effective regional administration (Asshiddiqie, 2010; Huda, 2010).

The principal contribution of this study lies in advancing a constitutional model of regional regulatory harmonization for foreign worker governance following Constitutional Court Decision No. 168/PUU-XXI/2023. Unlike previous studies that predominantly emphasize administrative supervision or labour protection in isolation, this research conceptualizes regional legislation as an integral component of constitutional implementation through which judicial decisions are translated into operational regulatory norms. The proposed framework demonstrates that harmonization should encompass not only formal conformity with superior legislation but also substantive regulatory mechanisms concerning mandatory Indonesian counterpart workers, measurable knowledge transfer, occupational restrictions, integrated supervision, and institutional accountability. By positioning regional regulations as constitutional instruments rather than merely administrative policies, this study contributes to broader scholarly debates on judicial implementation, multilevel governance, and regulatory harmonization within decentralized legal systems, while simultaneously providing practical guidance for provincial governments undertaking legislative reform in response to constitutional adjudication (International Labour Organization, 2024; Organisation for Economic Co-operation and Development (OECD), 2024).

Methodology

This study employs normative legal research (doctrinal legal research) to examine the constitutional implications of the harmonization of regional regulations governing foreign workers following Constitutional Court Decision No. 168/PUU-XXI/2023. Normative legal research is particularly appropriate because the principal object of analysis consists of legal norms, judicial reasoning, statutory interpretation, and the hierarchical relationship among legal instruments within Indonesia's constitutional system (Hutchinson, 2018; Marzuki, 2017). Rather than investigating social behaviour or institutional performance empirically, this research evaluates the coherence, consistency, and legal validity of regional regulations in light of constitutional principles governing labour protection, decentralization, and the supremacy of Constitutional Court decisions. The primary legal materials comprise the 1945 Constitution of the Republic of Indonesia, Law No. 13 of 2003 on Manpower as amended by Law No. 6 of 2023 on Job Creation, Law No. 23 of 2014 on Regional Government, Constitutional Court Decision No. 168/PUU-XXI/2023, and Gorontalo Provincial Regulations No. 1 of 2022 and No. 8 of 2016. Secondary legal materials include scholarly books, peer-reviewed journal articles, official government publications, and international reports concerning labour governance and foreign worker regulation (Decision No. 168/PUU-XXI/2023, 2023; Law No. 6 of 2023 (Job Creation Law), 2023; The Indonesian Constitution, 1945).

The research adopts three complementary analytical approaches to ensure a comprehensive constitutional assessment. First, the statutory approach (statute approach) is employed to examine the hierarchical consistency between regional regulations and superior legal norms governing employment and regional autonomy (Ibrahim, 2006; Marzuki, 2017). Second, the conceptual approach (conceptual approach) is used to analyze the legal doctrines of constitutional supremacy, legal protection, decentralization, and regulatory harmonization as the theoretical foundation for evaluating the constitutional legitimacy of regional legislation. Third, the case approach (case approach) focuses on Constitutional Court Decision No. 168/PUU-XXI/2023 by examining its *ratio decidendi*, constitutional interpretation, and normative consequences for provincial regulatory authority. Through the integration of these approaches, the research moves beyond descriptive legal interpretation toward a systematic constitutional evaluation of regional legislative reform and judicial implementation within Indonesia's decentralized governance framework (MacCormick, 2009; Weaver & Dworkin, 1987).

Legal analysis is conducted through qualitative legal reasoning using methods of legal interpretation, systematic analysis, and vertical harmonization of legal norms. The analytical process begins with identifying constitutional principles established by the Constitutional Court, followed by examining the compatibility of existing Gorontalo regional regulations with those constitutional standards. Subsequently, normative inconsistencies, regulatory gaps, and institutional implications are identified to formulate a constitutional model for regional regulatory harmonization in the governance of foreign workers (Banakar et al., 2005; Kelsen, 1967). Rather than merely determining whether regional regulations formally comply with superior legislation, this analytical framework evaluates whether they substantively fulfill constitutional objectives concerning legal certainty, protection of Indonesian workers, effective decentralization, and accountable public governance. Accordingly, the study produces both normative findings regarding the constitutional deficiencies of existing regional regulations and prescriptive recommendations for strengthening regional labour governance through constitutionally harmonized legislative reform (Decision No. 168/PUU-XXI/2023, 2023; International Labour Organization, 2024).

Findings and Discussion

Constitutional Implications of Constitutional Court Decision No. 168/PUU-XXI/2023 for Regional Labour Governance

The Constitutional Court occupies a pivotal position within Indonesia's constitutional architecture as the ultimate interpreter of the Constitution and the guardian of constitutional

supremacy. Consequently, every constitutional interpretation formulated through judicial review possesses binding legal consequences that extend beyond the disputed statutory provisions and influence the broader regulatory system. This principle reflects the doctrine that constitutional adjudication is not merely an instrument for resolving legal disputes but also a mechanism for constitutional norm development that guides legislative and executive institutions in shaping future public policy. As observed by Hans Kelsen, constitutional courts function as negative legislators by invalidating statutory provisions inconsistent with constitutional norms, thereby compelling legislatures and governmental institutions to reconstruct legal frameworks in conformity with constitutional principles (Kelsen, 1967, 2017). In the Indonesian context, this constitutional function has been consistently reinforced through the jurisprudence of the Constitutional Court of Indonesia, whose decisions possess *erga omnes* effect and are immediately binding upon all state institutions (Asshiddiqie, 2010). Consequently, Constitutional Court Decision No. 168/PUU-XXI/2023 should not be regarded solely as a judicial interpretation of employment legislation but as a constitutional benchmark that reshapes the normative framework governing foreign worker employment throughout Indonesia, including at the provincial level.

Constitutional Court Decision No. 168/PUU-XXI/2023 represents an important constitutional development in Indonesian labour law because it redefines the relationship between economic liberalization and the constitutional obligation of the state to protect Indonesian workers. Rather than rejecting the participation of foreign workers in national economic development, the Court adopted a proportional constitutional approach by recognizing that foreign workers remain necessary for sectors requiring specialized knowledge, advanced technology, and managerial expertise. At the same time, however, the Court reaffirmed that the employment of foreign workers must never diminish the constitutional rights of Indonesian citizens to obtain decent work and equal employment opportunities as guaranteed under Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Decision No. 168/PUU-XXI/2023, 2023; The Indonesian Constitution, 1945). Accordingly, the Court emphasized several constitutional safeguards, including the prioritization of Indonesian workers, the mandatory appointment of Indonesian counterpart workers, measurable knowledge and technology transfer, strengthened governmental supervision, and the limitation of foreign workers to positions genuinely requiring expertise unavailable within the domestic labour market (Decision No. 168/PUU-XXI/2023, 2023; International Labour Organization, 2019). These constitutional standards collectively demonstrate that labour governance should no longer be viewed solely from the perspective of investment facilitation but

must equally function as an instrument for realizing constitutional justice, social welfare, and sustainable human resource development.

The constitutional significance of Decision No. 168/PUU-XXI/2023 extends beyond its immediate impact upon employment legislation because it fundamentally alters the normative obligations of regional governments within Indonesia's decentralized governance system. Under Article 18 of the Constitution and Law No. 23 of 2014 on Regional Government, provincial governments possess delegated authority to administer employment affairs through regional legislation and administrative policies. Nevertheless, the exercise of such authority remains constitutionally conditioned upon compliance with higher legal norms and judicial interpretations established by the Constitutional Court (Huda, 2010; Law No. 23 of 2014 on Regional Government, 2014). Accordingly, regional autonomy cannot be interpreted as independent regulatory sovereignty but rather as constitutionally delegated authority operating within the hierarchical structure of the Indonesian legal system. This constitutional arrangement requires provincial governments not merely to preserve formal consistency with national legislation but also to internalize the constitutional values articulated by the Constitutional Court into regional regulatory frameworks. Therefore, the legal implications of Decision No. 168/PUU-XXI/2023 should be understood as imposing a positive constitutional obligation upon provincial governments to reassess, harmonize, and where necessary reconstruct regional regulations governing foreign workers. Such harmonization is essential to ensure that constitutional principles concerning labour protection, legal certainty, and accountable public governance are effectively translated into regional administrative practice rather than remaining abstract constitutional ideals (Walker, 2008).

The constitutional standards established by Constitutional Court Decision No. 168/PUU-XXI/2023 reveal a significant normative discrepancy within the existing regulatory framework of Gorontalo Province. The research demonstrates that Gorontalo Provincial Regulation No. 1 of 2022 concerning Employment Administration and Gorontalo Provincial Regulation No. 8 of 2016 concerning Retribution for the Extension of Foreign Worker Employment Permits were formulated under a regulatory paradigm that primarily emphasizes administrative licensing and fiscal administration. Although both regional regulations provide legal certainty regarding administrative procedures for employing foreign workers, they remain largely silent on substantive constitutional obligations reaffirmed by the Constitutional Court, including mandatory Indonesian counterpart workers, measurable knowledge and technology transfer, occupational restrictions based on labour market necessity, and integrated supervisory mechanisms (Decision No. 168/PUU-XXI/2023, 2023; Gorontalo Provincial Regulation No. 1 of 2022, 2022; Gorontalo

Provincial Regulation No. 8 of 2016, 2016). Consequently, the existing regional framework reflects a regulatory orientation that prioritizes administrative compliance rather than constitutional protection of Indonesian workers. From the perspective of constitutional harmonization, this omission constitutes more than a legislative gap; it represents a failure to internalize constitutional norms into regional legislation, thereby reducing the effectiveness of judicial implementation at the provincial level.

The analysis further indicates that the constitutional implications of Decision No. 168/PUU-XXI/2023 extend beyond the formal validity of regional regulations to encompass the substantive responsibilities of provincial governments in achieving the constitutional objectives of labour governance. Within Indonesia's decentralized constitutional system, regional governments are not passive executors of national legislation but active constitutional actors responsible for translating national legal principles into operational regulatory mechanisms (Asshiddiqie, 2010; Pettit, 2012; Law No. 23 of 2014 on Regional Government, 2014). Accordingly, constitutional compliance cannot be measured solely by the absence of conflict between regional regulations and national statutes; it must also be evaluated according to whether regional legislation effectively realizes constitutional values articulated through judicial interpretation. In the Gorontalo context, this requires the establishment of regulatory provisions that ensure foreign worker employment contributes directly to the enhancement of domestic human capital through enforceable obligations concerning counterpart workers, structured technology transfer, periodic competency development, and transparent institutional supervision. Without such substantive mechanisms, regional regulations risk becoming administratively valid yet constitutionally ineffective, as they fail to achieve the broader constitutional purpose identified by the Constitutional Court.

These findings also demonstrate that the relationship between constitutional adjudication and regional governance should be understood within the framework of vertical regulatory harmonization, whereby Constitutional Court decisions function as constitutional reference points guiding legislative reform across multiple levels of government. Rather than perceiving harmonization as a mechanical process of aligning statutory provisions, the present study argues that harmonization involves the integration of constitutional values into the substance, institutional design, and implementation mechanisms of regional legislation (Baquero Cruz, 2018; Walker, 2008). This approach requires provincial governments to undertake systematic regulatory review immediately following landmark constitutional decisions in order to identify normative inconsistencies, legal omissions, and institutional weaknesses affecting policy implementation. In Gorontalo Province, such a review reveals that existing regional regulations require substantial reconstruction rather than incremental amendment because the constitutional standards

introduced by Decision No. 168/PUU-XXI/2023 fundamentally alter the regulatory philosophy governing foreign worker employment. The shift from administrative control toward constitutionally accountable labour governance therefore necessitates comprehensive legislative reform capable of ensuring coherence between constitutional jurisprudence, national employment legislation, and regional administrative practice.

Finally, the findings support the proposition that Constitutional Court Decision No. 168/PUU-XXI/2023 should be interpreted not merely as a legal correction of statutory provisions but as a constitutional catalyst for transforming regional labour governance throughout Indonesia. The decision establishes a normative expectation that provincial governments move beyond procedural regulation toward a governance model integrating labour protection, investment sustainability, and constitutional accountability within a single regulatory framework (International Labour Organization, 2019; Organisation for Economic Co-operation and Development, 2025). Such transformation requires regional legislation to incorporate measurable indicators for assessing knowledge transfer, mandatory reporting obligations for enterprises employing foreign workers, coordinated labour inspection involving relevant governmental agencies, and effective administrative sanctions capable of ensuring compliance with constitutional objectives. Accordingly, the constitutional implications of the Decision are neither symbolic nor confined to judicial interpretation; rather, they impose an affirmative obligation upon regional governments to reconstruct legal institutions capable of translating constitutional norms into effective public governance. The Gorontalo case illustrates that the effectiveness of constitutional adjudication ultimately depends not only upon the authority of the Constitutional Court but also upon the willingness and institutional capacity of regional governments to operationalize constitutional principles through coherent, harmonized, and implementation-oriented regional legislation.

Normative Inconsistencies between Gorontalo Regional Regulations and Constitutional Standards

The constitutional standards articulated in Constitutional Court Decision No. 168/PUU-XXI/2023 establish a substantially different regulatory paradigm from that reflected in the existing legal framework of Gorontalo Province. The Court reaffirmed that the regulation of foreign workers should no longer be confined to administrative authorization or investment facilitation but must be constitutionally oriented toward protecting Indonesian workers through measurable regulatory safeguards (Decision No. 168/PUU-XXI/2023, 2023; The Indonesian Constitution, 1945). Consequently, regional legislation is expected to operationalize constitutional principles by ensuring that the employment of foreign workers contributes directly to domestic workforce

development, enhances legal certainty, and prevents unfair labour market competition. However, the present study finds that the existing Gorontalo regional regulations continue to reflect a predominantly administrative model of labour governance. While Gorontalo Provincial Regulation No. 1 of 2022 provides general provisions concerning employment administration and Gorontalo Provincial Regulation No. 8 of 2016 regulates the collection of retribution associated with foreign worker permits, neither regulation adequately incorporates the constitutional safeguards emphasized by the Constitutional Court. This finding demonstrates that the principal issue confronting regional labour governance is not the absence of regulation, but rather the absence of constitutional integration within the substance of regional legislation.

A closer examination reveals that the most significant inconsistency concerns the constitutional obligation to prioritize Indonesian workers through legally enforceable regulatory mechanisms. The Constitutional Court emphasized that the employment of foreign workers is constitutionally permissible only insofar as it complements, rather than substitutes, the domestic labour force (International Labour Organization, 2019). This principle requires provincial governments to formulate regional regulations capable of ensuring that employers recruit foreign workers only when equivalent expertise is unavailable within the national labour market, while simultaneously guaranteeing opportunities for Indonesian workers to acquire comparable competencies through structured counterpart arrangements. Nevertheless, neither of the Gorontalo regional regulations establishes explicit legal criteria governing labour market necessity, mandatory counterpart workers, competency indicators, or measurable technology transfer obligations. Instead, both regulations remain largely procedural, focusing on licensing administration and regional revenue without imposing substantive obligations upon enterprises employing foreign workers. Such regulatory omissions significantly reduce the capacity of regional governments to implement the constitutional objectives identified by the Constitutional Court and weaken the effectiveness of labour protection at the provincial level (Gorontalo Provincial Regulation No. 1 of 2022, 2022; Gorontalo Provincial Regulation No. 8 of 2016, 2016; Philipus M. Hadjon, 1987).

The research further identifies that normative inconsistencies extend beyond individual regulatory provisions and instead reflect a broader structural disconnect between constitutional jurisprudence and regional legislative design. Constitutional Court Decision No. 168/PUU-XXI/2023 introduced a governance-oriented model in which labour protection, technology transfer, institutional accountability, and governmental supervision operate as mutually reinforcing constitutional obligations (Walker, 2008). In contrast, the Gorontalo regulatory framework treats these components as fragmented administrative matters rather than interconnected constitutional

responsibilities. As a consequence, regional institutions possess limited legal authority to evaluate whether foreign worker employment genuinely contributes to local human resource development or merely fulfills procedural licensing requirements. This institutional deficiency illustrates that constitutional compliance cannot be assessed solely through formal consistency with higher legislation; rather, it requires substantive harmonization whereby constitutional values are translated into enforceable regional legal norms. The comparative assessment presented below summarizes the principal normative inconsistencies identified through the present analysis.

Table 1. Normative Harmonization Matrix between Constitutional Court Decision No. 168/PUU-XXI/2023 and Gorontalo Regional Regulations

Constitutional Standard	Constitutional Court Decision No. 168/PUU-XXI/2023	Gorontalo Provincial Regulations	Normative Assessment
Priority for Indonesian workers	Constitutional obligation to prioritize Indonesian workers while permitting foreign workers only where necessary	General employment policy without operational criteria	Partial compliance
Mandatory Indonesian counterpart worker	Explicit requirement for Indonesian counterpart workers to accompany foreign workers	No explicit provision regulating counterpart workers	Regulatory gap
Knowledge and technology transfer	Mandatory and measurable transfer of knowledge and expertise	General references to training without implementation mechanisms	Insufficient regulation
Restriction of foreign worker positions	Limited to positions requiring specialized expertise unavailable domestically	No specific occupational limitation or assessment criteria	Normatively inconsistent
Integrated labour supervision	Strengthened supervision involving competent governmental authorities	Administrative monitoring with limited supervisory coordination	Weak institutional framework
Administrative sanctions	Effective sanctions to ensure employer compliance with constitutional obligations	Fiscal-oriented sanctions with limited substantive enforcement	Ineffective constitutional enforcement

Source: Compiled by the author based on Constitutional Court Decision No. 168/PUU-XXI/2023, Gorontalo Provincial Regulation No. 1 of 2022, and Gorontalo Provincial Regulation No. 8 of 2016.

Following the comparative assessment presented above, it becomes evident that the deficiencies of the Gorontalo regulatory framework are qualitative rather than merely quantitative. The absence of explicit provisions concerning counterpart workers, measurable technology transfer, occupational restrictions, and integrated labour supervision indicates that the regional

regulations have not internalized the constitutional philosophy underpinning Constitutional Court Decision No. 168/PUU-XXI/2023. Instead, the existing regulatory instruments continue to conceptualize foreign worker governance primarily as an administrative licensing matter, with greater emphasis placed on procedural compliance than on the realization of constitutional objectives (Decision No. 168/PUU-XXI/2023, 2023; Gorontalo Provincial Regulation No. 1 of 2022, 2022). This orientation contrasts with contemporary approaches to labour governance, which increasingly regard foreign worker regulation as an instrument for strengthening national human capital through legally enforceable obligations imposed upon employers (International Labour Organization, 2024). Consequently, the constitutional deficiency of the Gorontalo regulations lies not in their formal legality but in their inability to transform constitutional principles into operational legal norms capable of guiding administrative practice and protecting the constitutional rights of Indonesian workers.

These normative inconsistencies also generate broader institutional consequences for regional governance. In the absence of clearly defined constitutional standards, labour inspectors and regional administrative agencies possess limited legal authority to evaluate whether enterprises employing foreign workers have fulfilled substantive obligations relating to knowledge transfer, workforce localization, or competency development. As a result, regulatory enforcement becomes disproportionately focused on documentary compliance, such as permit validity and administrative reporting, rather than on assessing whether the employment of foreign workers contributes to the constitutional objectives of improving the quality and competitiveness of the domestic workforce (Philipus M. Hadjon, 1987; Law No. 23 of 2014 on Regional Government, 2014). This condition ultimately diminishes the effectiveness of provincial labour governance because regional institutions lack measurable legal indicators for determining compliance with constitutional principles. Moreover, such regulatory ambiguity increases the risk of inconsistent administrative practices across regions, thereby undermining legal certainty and creating unequal standards of protection for Indonesian workers. From the perspective of constitutional governance, therefore, the absence of substantive regulatory mechanisms constitutes an institutional weakness that limits the practical implementation of the Constitutional Court's jurisprudence.

The foregoing analysis confirms that harmonization should not be understood as a technical exercise of amending isolated statutory provisions but as a process of constitutional reconstruction within the regional regulatory system. The findings demonstrate that Gorontalo's regional regulations require substantive reform to incorporate constitutional standards established by Constitutional Court Decision No. 168/PUU-XXI/2023 into the design, implementation, and enforcement of labour governance (Decision No. 168/PUU-XXI/2023, 2023; Walker, 2008).

Such reform should include explicit provisions governing mandatory Indonesian counterpart workers, measurable knowledge and technology transfer programmes, objective criteria for determining the necessity of foreign workers, integrated supervision involving relevant governmental institutions, and effective administrative sanctions for non-compliance. These elements collectively represent the constitutional minimum required to ensure that foreign worker governance simultaneously promotes economic development and fulfills the State's constitutional obligation to protect Indonesian workers. Accordingly, the identified normative inconsistencies provide the analytical foundation for developing a comprehensive model of regional regulatory harmonization, which is discussed in the subsequent section as the principal normative contribution of this study.

Constitutional Limits of Provincial Authority in Governing Foreign Workers

The constitutional authority of provincial governments to regulate foreign workers should be understood within Indonesia's multilevel governance structure, where legislative competence is distributed across different levels of government while remaining subject to constitutional supremacy. Although decentralization grants provinces discretion in administering employment affairs, this discretion is constitutionally limited by the principle that regional legislation may neither contradict national statutes nor depart from constitutional interpretation established by the Constitutional Court (Law No. 23 of 2014 on Regional Government, 2014; The Indonesian Constitution, 1945). Accordingly, provincial governments exercise delegated regulatory authority, rather than original legislative competence, in matters concerning foreign worker governance.

This constitutional arrangement reflects the broader doctrine of the unitary state (*eenheidsstaat*), under which decentralization is designed to improve administrative effectiveness rather than fragment legislative sovereignty. In comparative constitutional practice, regional autonomy generally allows sub-national governments to adapt national policies to local conditions without altering the substance of constitutional rights or national legal standards (Lijphart, 2004; Marko, 2010; Shah & Watts, 1999). Consequently, regional regulations governing foreign workers should function as implementing legislation that operationalizes nationally established constitutional principles while responding to local labour market conditions, industrial characteristics, and regional development priorities.

The distinction between policy discretion and constitutional discretion is particularly important in the regulation of foreign workers. Provincial governments retain flexibility to determine administrative procedures, institutional coordination, labour inspection mechanisms, and workforce development programmes. However, they possess no constitutional authority to redefine the eligibility requirements for foreign workers, modify national licensing standards, or

reduce the constitutional protections afforded to Indonesian workers (Decision No. 168/PUU-XXI/2023, 2023; Gunawan & Mashari, 2024). These matters remain within the competence of the national legislature and are authoritatively interpreted by the Constitutional Court. Consequently, regional innovation must occur within constitutionally prescribed boundaries rather than through normative deviation.

The findings of this research indicate that Gorontalo Province has not exceeded its constitutional authority; instead, it has exercised that authority conservatively by limiting regional regulation to administrative and fiscal matters. While this approach avoids direct conflict with national legislation, it simultaneously results in regulatory underreach, whereby constitutionally significant issues remain insufficiently regulated (Gorontalo Provincial Regulation No. 1 of 2022, 2022; Gorontalo Provincial Regulation No. 8 of 2016, 2016). The absence of explicit provisions governing counterpart workers, technology transfer, competency development, and integrated supervision demonstrates that provincial regulatory authority has not been fully utilized to implement constitutional objectives identified in Constitutional Court Decision No. 168/PUU-XXI/2023.

This condition illustrates an important constitutional principle: compliance with higher legislation does not necessarily equate to effective constitutional implementation. A regional regulation may satisfy formal hierarchical requirements yet remain substantively inadequate if it fails to translate constitutional norms into operational administrative obligations (Selznick & Fuller, 1965; Waldron, 2012). In the context of foreign worker governance, constitutional implementation requires provincial governments to move beyond procedural licensing toward regulatory mechanisms capable of measuring employer compliance, monitoring workforce localization, and ensuring that foreign worker employment contributes to regional human capital development. Such measures strengthen constitutional accountability without exceeding the limits of provincial competence.

Another constitutional limitation concerns institutional coordination. Foreign worker governance involves multiple governmental actors, including ministries responsible for employment, immigration, investment, and regional administration. Effective provincial regulation therefore depends not upon expanding regional authority but upon improving intergovernmental coordination within existing constitutional arrangements. Comparative experiences demonstrate that multilevel labour governance is most effective when regional governments function as implementing partners of national policy through integrated supervision, information sharing, and coordinated enforcement rather than through overlapping legislative authority (International

Labour Organization, 2022). This collaborative approach also reduces regulatory fragmentation and promotes greater legal certainty for employers, workers, and public institutions.

Accordingly, the constitutional limits imposed upon provincial governments should be understood not as obstacles to regional autonomy but as safeguards ensuring coherence within Indonesia's legal system. Constitutional Court Decision No. 168/PUU-XXI/2023 requires provinces to exercise their delegated authority proactively by adopting implementing regulations that strengthen labour protection, facilitate measurable technology transfer, improve supervisory capacity, and enhance institutional accountability. Within these constitutional boundaries, Gorontalo Province retains sufficient regulatory space to modernize its regional legislation without encroaching upon the exclusive competence of the central government. Therefore, the future development of foreign worker governance should emphasize constitutional implementation through regional regulatory innovation, rather than constitutional reinterpretation through regional legislation.

Conclusion

This study demonstrates that Constitutional Court Decision No. 168/PUU-XXI/2023 has fundamentally transformed the constitutional framework governing foreign workers in Indonesia by shifting the regulatory paradigm from administrative control toward constitutionally accountable labour governance. The Decision establishes that the employment of foreign workers must not only facilitate economic development and investment but also strengthen the constitutional protection of Indonesian workers through measurable knowledge transfer, mandatory counterpart workers, integrated supervision, and effective regulatory accountability. Consequently, the constitutional implications of the Decision extend beyond national legislation, imposing a positive obligation upon provincial governments to harmonize regional regulations with the constitutional standards articulated by the Constitutional Court. The findings reveal that the existing regulatory framework in Gorontalo Province remains predominantly administrative and has yet to fully internalize these constitutional principles, resulting in substantive normative inconsistencies despite formal compliance with higher legislation.

The research further finds that the principal challenge facing regional labour governance is not the absence of regulatory authority but the limited constitutional utilization of that authority. Provincial governments possess sufficient delegated competence to develop implementing regulations concerning labour supervision, workforce development, counterpart worker mechanisms, knowledge transfer, and institutional coordination without exceeding the constitutional limits of regional autonomy. Accordingly, harmonization should not be understood merely as revising statutory language but as a process of constitutional implementation through

which regional legislation translates constitutional jurisprudence into effective administrative governance. In this respect, the Gorontalo case illustrates that regional regulations should function as constitutional instruments capable of operationalizing national labour policy while simultaneously accommodating regional socio-economic conditions within Indonesia's decentralized governance framework.

The contribution of this study lies in advancing a constitutional perspective on regional regulatory harmonization following judicial review decisions. Rather than viewing Constitutional Court decisions solely as mechanisms for reviewing statutory validity, this research demonstrates their broader function as constitutional benchmarks guiding legislative reform at the regional level. The proposed analytical framework contributes to the development of constitutional and administrative law by emphasizing that effective foreign worker governance requires coherence among constitutional jurisprudence, national legislation, and regional regulatory implementation. Future research may extend this framework through comparative analyses across Indonesian provinces or other decentralized jurisdictions to evaluate how constitutional adjudication influences regional legislative reform and multilevel governance in the regulation of labour migration.

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