

LAW ENFORCEMENT AGAINST FOREIGN NATIONALS WHO EXCEED THE PERIOD OF STAY PERMIT IN INDONESIA

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Abstract

Immigration problems are issues that cannot be ignored. The arrival of foreign nationals to Indonesia has an important role in supporting national development, as it can provide various benefits and advantages for the country. The mobility of foreigners in and out of Indonesia contributes to the increase of foreign exchange, especially in increasing regional income to support development and increase the amount of foreign currency deposits. This research focuses on the problems that arise when foreign nationals exceed the limit of their stay in Indonesia. This research utilizes the Empirical Juridical method with a juridical analysis approach in empirical legal studies. This approach views law as an inseparable part of human life. Law is not only considered as something abstract, but also understood through individual behavior and social dynamics in society. The study of social behavior in this context is directed at verifying the validity of the applicable law based on the empirical data obtained. Based on the research results, administrative action in immigration is closely related to selective policy as stipulated in the explanation section of Law No. 6/2011 on Immigration. Although legal provisions have regulated this, there are still cases of foreign nationals misusing their residence permits. One example of a case currently being handled by the Office of IMMIGRATION CLASS I TPI SAMARINDA shows that violations of residence permits are not criminally prosecuted, but are only subject to administrative sanctions in the form of deportation, as stipulated in Article 75 paragraph (2) letter f of Law Number 6 of 2011 concerning Immigration.

Keywords: Stay Permit, Law Enforcement, Administrative Sanctions

INTRODUCTION

Indonesia is a sovereign state with a people or population as members of a state. The population (*ingezetenen*) or the people have a special position in a country and become one of the main elements that determine the existence of the country. In the 1945 Constitution of the Republic of Indonesia, Chapter X on Citizens and Residents, Article 26 paragraph (1) states that Indonesian citizens are those who come from the Indonesian nation, as well as people from other nations who have obtained citizenship through legal processes. According to Samidjo, from a legal perspective, the population of a country can be categorized into citizens (*staatsburgers*) and foreigners (*niet-ingezetenen*), namely individuals who are not Indonesian citizens, not natives, or those who have given up their citizenship status but are still in the territory of Indonesia. (Firmansyah, 2013).

The presence of foreigners in Indonesia has implications for immigration policies and regulations implemented by the government. The ease of cross-border travel is increasing, driven by rapid advances in technology and the quality of human resources, as well as the development of transportation and communication infrastructure. This phenomenon has contributed to the increased mobility of the global community. Many countries are competing to develop the tourism sector as a strategy to increase economic growth as well as increase foreign exchange earnings. (Sudini, 2008).

As an archipelago located in Southeast Asia, Indonesia has a strategic position with abundant natural resources, as well as a diversity of cultures, ethnicities, tribes, religions and customs. This uniqueness is a factor of attraction for other countries to come to Indonesia for various purposes. The presence of foreigners can bring benefits to Indonesia, especially in contributing to national development. However, with the development of various sectors such as technology, transportation, information, and economy, the boundaries between countries are becoming increasingly unclear. The flow of people in and out of a country is increasing and difficult to control.

The problem of residence permits for Foreign Nationals (WNA) in Indonesia is a complex issue that requires serious attention from the government and society. Although Indonesia already has strict regulations regarding residence permits, such as the Immigration Law, in fact there are still many WNA who exceed the permitted stay limit. Violations of residence permits often occur, where many WNA use visit visas to carry out activities outside those permitted, including the practice of misusing residence permits that should be strictly regulated.

The issue of immigration is an important aspect that must be taken seriously. The presence of foreigners in Indonesia is inevitable because it is related to national development and can benefit the country. The mobility of foreign nationals in and out of Indonesia contributes to the increase of foreign exchange, especially in increasing regional income to support development and increase foreign currency reserves. The main focus of this research is the problem of foreign nationals who overstay their stay permit in Indonesia. This research also examines how the law enforcement mechanism against such violations in the Office of IMMIGRATION CLASS I TPI SAMARINDA.

RESEARCH METHOD

This research applies the Empirical Juridical method with juridical analysis in empirical legal studies. This approach views law as an inherent part of human life, not just a concept that stands alone. Law is not only understood as something abstract, but also evaluated through individual actions and patterns of community behavior. The study of the social aspects of society is useful for testing the validity of the applicable law based on empirical data obtained (Jonaedi and Jhonny Ibrahim, 2018).

RESULTS AND DISCUSSION

Overview of the Research Location

Immigration Office Class I TPI Samarinda is part of the Technical Implementation Unit that handles immigration affairs under the auspices of the Regional Office of the Ministry of Law and Human Rights of East Kalimantan Province. This institution is responsible for carrying out some of the duties and functions of the Ministry of Law and Human Rights of the Republic of Indonesia in the field of immigration for the provinces of East Kalimantan and North Kalimantan. Its history began on January 19, 1972, when it was still a Landing Post and Resort under the Regional Office of the Directorate General of Immigration Balikpapan. Furthermore, on February 3, 1973, this post was designated as the Samarinda Immigration Resort. On October 1, 1975, its status changed to the Samarinda Office of the Directorate General of Immigration. Another change occurred on October 1, 1981, when this office was designated as the Samarinda Class II Immigration Office. Based on the Decree of the Minister of Justice of the Republic of Indonesia No. M.03-PR.07.04 of 1991 issued on April 15, 1991, the status was again upgraded to the Samarinda Class I Immigration Office: M.03-PR.07.04 of 1991 issued on April 15, 1991, its status was again upgraded to Samarinda Class I

Immigration Office. Currently, the office is located in the center of Samarinda City, precisely on Jl. Juanda No. 45, as part of the capital city of East Kalimantan Province.

Vision:

"People Obtain Legal Certainty"

Mission:

1. Realizing quality laws and regulations;
2. Realizing quality legal services;
3. Realizing quality law enforcement;
4. Realizing respect, fulfillment, and protection of human rights;
5. Realizing administrative management services of the Ministry of Law and Human Rights; and
6. Realizing a Ministry of Law and Human Rights apparatus that is professional and has integrity.

Law Enforcement System

Law enforcement is the process of implementing rules by individuals and institutions that have responsibilities in accordance with the duties, obligations, and authority given to them, either personally or in a group. Kusnu (2012) states that law enforcement is an effort to harmonize the values reflected in established legal norms and principles. Success in law enforcement can only be achieved if various aspects of the legal system can maintain balance and harmony. Meanwhile, Soekanto (2010) explains that law enforcement is an activity that aims to solve the problem of values that are realized in the norms and legal thinking that has been formed in order to create order in social life. In this case, law enforcement not only functions as a means of social control, but also as a means of creating harmony in community interaction. In relation to immigration law enforcement, the Class II Immigration Office of Tanjung Balai Karimun carries out two main mechanisms in carrying out its duties.

Law enforcement is the implementation of regulations by law enforcement officials and related parties who have interests in accordance with their respective authorities based on applicable regulations. In carrying out duties in the field of immigration, all immigration regulations in Indonesia must be applied without exception, both for Indonesian citizens and foreign nationals. The application of this law aims to provide a deterrent effect to individuals who commit immigration-related offenses in Indonesia. Law enforcement in the immigration aspect has a crucial role because it is closely related to the protection and sovereignty of the state (Santoso, 2014). Strict application of the law will ensure that Indonesia's integrity and sovereignty are maintained, thus indirectly gaining respect and recognition from other countries.

Immigration law enforcement applied to Indonesian citizens (WNI) is focused on various problems, such as:

- a. Misuse or falsification of identity
- b. Legal liability for sponsors
- c. Possession of more than one passport
- d. Involvement in violation of immigration provisions.

Meanwhile, the application of immigration law against foreign nationals (WNA) focuses on various issues related to violations of immigration regulations:

- a. Misuse or falsification of identity of foreigners
- b. Registration of foreigners and issuance of surveillance book
- c. Violation of provisions related to residence permit
- d. Illegal entry or stay in Indonesian territory
- e. Surveillance through monitoring or raids
- f. Potential immigration violations due to geographical factors in border areas.

In following up on violations that occur, immigration law regulates two types of actions that can be given by immigration officers to violators, namely immigration administrative sanctions and investigation processes.

The granting of a residence permit is carried out by immigration officials or foreign service officials, whose issuance is adjusted to the type of visa granted based on the provisions in the Immigration Law (Jazim, 2015). Based on the provisions of Article 56 paragraphs (1) and (2), a residence permit granted to a foreign national may undergo a change in status, such as from a Visit Stay Permit to a Limited Stay Permit, or from a Limited Stay Permit to a Permanent Stay Permit. In addition, in accordance with Article 78 paragraph (3) of Law Number 6 Year 2011 on Immigration, foreign nationals whose residence permit has expired and are still in Indonesia more than sixty (60) days after expiration, will be subject to administrative sanctions in the form of deportation and detention.

In the context of immigration law, administrative sanctions as stated in Article 1 paragraph (31) of Law Number 6 Year 2011 related to Immigration are actions imposed by Immigration Officials on foreigners without a judicial process. Furthermore, Article 75 paragraph (1) of the same law explains that immigration administrative actions can be applied to foreign individuals who are involved in activities that are considered dangerous or potentially threatening security and public order, as well as to those who do not obey or violate applicable laws and regulations.

The immigration administrative actions as described in Article 75 paragraph (2) of Law Number 6 Year 2011 related to Immigration include:

- 1) inclusion of name in the list of prevention or refusal of entry;
- 2) restriction, amendment, or revocation of residence permit;
- 3) prohibition of accessing or being in certain areas within Indonesia;
- 4) obligation to stay in certain locations within Indonesia;
- 5) imposition of fines or burden fees; and/or
- 6) expulsion or deportation from Indonesian territory.

The decision on whether a person will be subject to immigration administrative sanctions or processed through judicial mechanisms is entirely within the authority of Immigration Officers at every level of the organizational structure. Lack of clarity regarding the application of administrative sanctions to violations that are not actually administrative in nature often becomes a problem in the implementation of immigration law enforcement.

Administrative action in immigration is closely related to the principle of selectivity in immigration policy as described in Law Number 6 Year 2011 on Immigration. This principle of selectivity is the main basis that is universal and applied by almost all countries in the world. This principle is also part of state sovereignty that must be respected by any party.

The implementation of immigration law begins with monitoring the flow of individuals into and out of Indonesian territory, as well as controlling the presence of foreign nationals in the country. Immigration officers have the right to take administrative measures against foreigners who are involved in activities that are considered dangerous, at risk of disturbing stability and public order, or do not comply with applicable regulations.

The authority to determine immigration administrative policies at the operational level is under the responsibility of the Head of the Immigration Office. The task of supervision and control is carried out by the immigration coordinator or field in each Regional Office of the Ministry of Law and Human Rights. Meanwhile, at the national level, the responsibility lies with the Director General of Immigration, which in its implementation is delegated to the Director of Immigration Investigation and Enforcement (Syahrin, 2018).

The most common immigration administrative sanction imposed on violators of immigration rules is expulsion or deportation. Deportation is a legal action that aims to forcibly repatriate foreign nationals from Indonesia. The implementation process consists of several stages, such as the preparation of minutes of examination of individuals proven to have violated immigration provisions, with assistance from translators. In addition, embassy representatives from the individual's home country are also present to ensure the accuracy of their identity, including validating their passport documents.

Furthermore, a check is made on the validity of the visa, which can be obtained through the Embassy of the Republic of Indonesia abroad or issued upon arrival in Indonesia. After that, the authorized Immigration Officer, namely the Head of the Immigration Office, will issue a deportation decision letter. This decision must be delivered to the individual concerned within a maximum of seven days from the date of determination. While waiting for the deportation process, foreigners subject to immigration action will be placed in the Immigration detention room until all procedures are completed.

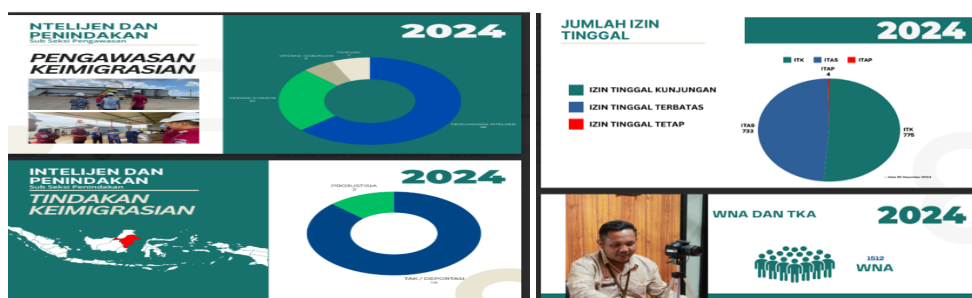


Figure 1. Immigration Supervision Data and diagram of the Number of Foreign National Residence Permits Data from official website (Source: <https://kanimsamarinda.kemenkumham.go.id>)

Law enforcement against foreign nationals who overstay in Indonesia is a complex issue that requires serious attention from the government. The visa-free policy implemented in Indonesia, although aimed at increasing tourism and investment, also brings challenges in terms of supervision and law enforcement against foreigners who commit violations, such as overstay or exceeding the period of stay. Research by Setiadi and Afrizal shows that the visa-free program has a significant impact on the employment sector, especially in terms of illegal foreign workers who take improper advantage of this policy (Setiadi & Afrizal, 2019). In addition, Jati et al. highlighted that supervision of foreigners at immigration offices is still weak, which contributes to the increase in overstay cases (Jati et al., 2021). One factor that exacerbates this situation is the lack of effective supervision from the authorities. Dananjaya et al. note that during the Covid-19 pandemic, immigration surveillance of foreigners holding free-visit visas has become increasingly important, but also increasingly difficult to conduct (Dananjaya et al., 2021).

This research shows that policies taken by the government to address this issue, such as the extension of residence permits, are often not matched by strict law enforcement actions against violations that occur (Utomo et al., 2022). This creates a loophole that can be utilized by foreigners to violate existing provisions. Furthermore, Utomo et al. emphasized that during the pandemic, many foreigners are forced to overstay due to international travel restrictions, which adds to the challenges for the government in enforcing the law (Utomo et al., 2022). This weak law enforcement not only impacts national security, but can also affect Indonesia's image in the international eyes. Therefore, it is crucial for the government to improve its monitoring and enforcement system, including through increasing the capacity of immigration officers and the use of technology to monitor the presence of foreigners in Indonesia (Sande, 2020). In this context, a more selective policy in issuing residence permits and monitoring foreigners from certain countries should also be considered. Sande argues that the implementation of selective policies can help reduce violations committed by foreigners (Sande, 2020). Thus, stricter and more systematic law enforcement on foreigners who violate residence permits is expected to reduce overstay cases and increase compliance with immigration regulations in Indonesia.

Legal Consequences for Foreign Nationals Who Exceed the Period of Stay In Indonesia

Violation of residence permit is one of the most common cases of immigration crime. Residence permits granted to foreigners to temporarily reside in Indonesia are often misused, resulting in various legal problems related to immigration. The residence permit itself is an official document that is submitted to foreigners as a legal basis for staying in Indonesia. The existence of a residence permit is very important, because without this document, foreigners do not have the legality to live in Indonesian territory.

The issuance of a residence permit is carried out by an Immigration Officer or Foreign Service Officer based on the type of visa that has been obtained in accordance with the provisions in the Immigration Act. Based on Article 56 paragraphs 1 and 2, a residence permit that has been granted to a foreigner can be transferred in status, for example, a change in the status of a residence permit can be implemented from a Visit Stay Permit to a Limited Stay Permit or from a Limited Stay Permit to a Permanent Stay Permit. In addition, based on the provisions of Article 78 paragraph 3 of Law Number 6 Year 2011 related to Immigration, foreign nationals who remain in Indonesia more than 60 days after their residence permit expires will be subject to administrative actions, such as deportation and detention.

Based on Article 38 of Law Number 6 Year 2011, visit visas are granted to foreigners who enter Indonesia for various purposes, such as government interests, education, social and cultural activities, tourism, business, family affairs, journalism, or as a stopover before continuing their journey to another country. In addition, Article 48 stipulates that every foreign individual residing in Indonesia must have a residence permit in accordance with the visa owned. The types of residence permits stipulated in paragraph (1) include diplomatic residence permits, official residence permits, temporary residence permits, limited residence permits, and permanent residence permits (Hadi & Syahputra, 2020). Any foreigner who intentionally misuses the residence permit or carries out activities that are not in line with the purpose of granting the permit may be subject to legal sanctions. In Law Number 6 Year 2011 related to Immigration, especially in Article 122 letter a, it is explicitly stated that this violation can lead to criminal punishment with a maximum imprisonment of 5 years and a maximum fine of Rp 500,000,000.00 (five hundred million rupiah).

CONCLUSION

Administrative action in the field of immigration is closely related to the selective immigration policy, as described in the Explanation Section of Law Number 6 Year 2011 on Immigration. The

principle of selective immigration is a fundamental concept that applies in various countries in the world, as a form of protection of state sovereignty that must be respected.

The implementation of immigration law enforcement starts from the aspect of monitoring the movement of people entering and leaving the territory of the Republic of Indonesia, as well as monitoring the presence of foreign nationals in the country. The Immigration Law stipulates that misuse of a residence permit is an offense that can be sanctioned in accordance with applicable regulations. Although the regulation has been enacted, in practice there are still foreign nationals who abuse their residence permits, such as the case being handled by the Immigration Office Class I TPI Samarinda. In the case of abuse of residence permit, the Immigration Office Class I TPI Samarinda does not apply criminal proceedings against violators, but only provides administrative remedies in the form of deportation as stipulated in Article 75 paragraph 2 letter f of Law Number 6 Year 2011 related to Immigration.

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