



## Law Enforcement on Criminal Acts of Abuse of Immigration Stay Permit on Foreign Citizens

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### Abstract

The state of Indonesia is an archipelago that stretches from Sabang to Merauke with abundant wealth of natural resources and natural beauty, so this becomes a special attraction for foreign nationals to be able to enter Indonesia. Foreign nationals who want to enter Indonesia of course must go through immigration checkpoints for inspection, Immigration as an authorized agency to conduct checks and traffic control of people entering and exiting Indonesian territory based on the principle of selective (Selectif Policy) which only allows foreign nationals who provide benefits and do not endanger security or public order that is only allowed to enter and be able to be in Indonesia. However, not a few foreign nationals commit violations related to immigration in Indonesia such as by violating the deadline for residence permits (overstays) to misuse residence permits that are not in accordance with the purpose and purpose of the visa owned to carry out activities that are not in accordance with the rule of law in Indonesia such as working, smuggling, international crimes, and others. For this reason, law enforcement is in the form of granting immigration administrative actions to those who violate residence permits or law enforcement through *projustisia* judicial processes.

**Keywords:** Law enforcement, Abuse, Residence permit.

### A. Introduction

In the current era of globalization, it has resulted in an increase in the movement of people from one country to another. This phenomenon has become a concern for countries in the world including Indonesia because every country in the world has its own rules in regulating the traffic of people who will enter or leave the territory of their country. Moreover, Indonesia itself is located between two continents, namely the Asian continent and the Australian continent as well as two oceans, namely the Indian Ocean and the Pacific Ocean and Indonesia has an area of 18 million square kilometers with 17,590 islands owned which makes Indonesia the largest archipelagic country in the world. . Indonesia's geographically strategic location makes Indonesia one of the fertile countries rich in spices and other potential natural resources, so that natural wealth becomes a driving and supporting factor that attracts foreign nationals to enter and settle in Indonesia.

So that in the era of globalization, which increases the movement of people from one country to another, there are many immigration problems. For this reason, Immigration as an authorized agency in carrying out duties in the field of immigration, which at the time of inspection at the immigration checkpoint or it can be said that the gate of the state is based on the principle of being selective (Selective Policy). The establishment of this principle makes the Indonesian immigration authorities have an operational basis in refusing or allowing foreign nationals, both in terms of entry, presence, and activities of foreign nationals in Indonesia. Not only

that, the immigration authorities also supervise and take action against foreign nationals in Indonesia in order to reduce the potential for immigration crimes that occur in the future. This is inseparable from the notion of immigration itself, which contains the first purpose of the traffic of people entering and leaving, and the second concerning the supervision of foreign nationals, which consists of supervision of entry and exit, supervision of the existence and supervision of the activities of foreign nationals. in Indonesia.

Supervision is one of the immigration functions that is no less important than other immigration functions, where supervision is a series of process activities in order to supervise the implementation of tasks whether or not it is in accordance with predetermined rules. Foreign citizens are citizens who live or settle in a certain country but do not come from the country they occupy and have various goals in the form of education, business or others. And foreign nationals who enter the territory of Indonesia must have valid and still valid travel documents, which include passports, visas, and residence permits. The problem that often occurs in travel documents is about the misuse of residence permits, in which the residence permits are misused by the permit holders so that there are many cases of abuse of residence permits. A residence permit is very important, because without a residence permit or its validity period has expired, the foreign citizen cannot be in the territory of Indonesia. Residence permits are given by immigration officials or foreign service officials on duty in accordance with the visas that have been given and have been regulated in the Immigration Law. (Naufal, 2018) Therefore, law enforcement is needed as a form of firm action from the government. Based on the description above, the formulation of the problem is how the law enforcement process against the criminal act of misuse of the immigration stay permit and what are the obstacles in law enforcement against the criminal act of abuse of the immigration stay permit.

## **B. Research Methods**

The research method used in this journal is a normative legal research method, namely a legal research method carried out by searching and analyzing existing legal sources and written in the literature through applicable laws, books and scientific journals relating to law enforcement against crimes. criminal abuse of immigration residence permit. The data collection technique used in writing this journal was obtained by literature study. This method is by conducting research on journals, books, scientific works, dictionaries, theses and others. The data analysis technique used in writing this journal is qualitative, namely the data obtained in the form of logical and effective sentences arranged systematically and then conclusions are drawn.

## **C. Discussions**

### **1. Law Enforcement On Criminal Acts Of Abuse Of Immigration Stay Permit**

Law enforcement is a series of processes carried out through various efforts so that legal norms can actually be enforced and function as guidelines for people in state life. (Arief, 2007) Included in immigration law which is part of the legal system in force in Indonesia, and even included in the subsystem of State Administrative

Law, which has existed since the Dutch colonial government in Indonesia. (Santoso, 2004) So what happened at the immigration checkpoint which is a the place where various kinds of foreign nationals enter and leave the territory of Indonesia, therefore to regulate these crossings, in the government policy in the field of immigration it is explained that immigration adheres to the principle of selective policy which is a policy based on selective principles. Based on this principle, which means that only foreign nationals are allowed to enter Indonesia who can provide benefits for the welfare of the people, nation and the Republic of Indonesia. (Armansyah, 2019) Not only that, for foreign nationals who enter the territory of Indonesia and want to live in Indonesia, there needs to be arrangements and restrictions in the form of permits granted to foreign nationals according to the intent and purpose concerned to Indonesia so as not to endanger security and order in the territory of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, as stated has been written in Law Number 6 of 2011 article 8 paragraph 2 which contains Every Foreigner who enters the Indonesian Territory is required to have a valid and valid Visa, unless otherwise stipulated based on this Law and international agreements. (*Undang-undang Nomor 6 Tahun 2011 tentang Keimigrasian*, no date)

Based on this, in order to realize the principle of selective policy and to ensure the safety and benefits of foreign nationals who are beneficial to the Indonesian state in supporting the maintenance of the stability of the national interest in the Indonesian state, it is necessary to be aware of the negative impacts arising from the crossing of people entering the country. and exit, as well as the presence and activities of foreign nationals in the territory of Indonesia. And for that it is necessary to enforce immigration rules when people enter or leave at the immigration checkpoint, it does not stop there because it is not a guarantee for foreign nationals not to commit violations, for example immigration violations and even Transnational Organized Crimes (TOC) crimes, starting from from people smuggling, trafficking in persons, money laundering, drugs, terrorism, etc. that can be carried out in Indonesia, therefore the role of immigration does not end there, then the entire rule of immigration law must be enforced on everyone within the jurisdiction of the Republic of Indonesia. both Indonesian citizens and foreign nationals, this is done in order to create a deterrent effect on immigration violators in Indonesia.

Law enforcement in the field of immigration is very important, because immigration is closely related to the sovereignty of a country. With strict law enforcement, it will indirectly be respected and appreciated by other countries. (Sanusi, 2017) Immigration law enforcers are determined by law in this case are immigration officials and those who have been given the authority as Immigration PPNS. Immigration Civil Servant Investigator.

Immigration crime is any act that violates immigration rules and is considered a form of crime and offense subject to criminal penalties. Immigration law enforcement in the territory of the Republic of Indonesia is pursued first with preventive efforts then followed by repressive efforts, including through immigration measures. Immigration acts are also imposed on foreign nationals who are involved in organized international or transnational crimes and can harm or endanger the people in Indonesia. (Hartono, 2012) Foreign nationals who enter and are in Indonesia are required to have a residence permit as a form of permit granted. to foreign nationals

in accordance with their respective aims and objectives to Indonesia so as not to endanger security and order in the territory of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The criminal act of immigration abuse in the form of abuse of a residence permit is regulated in Law number 6 of 2011 article 122 letter a which contains any foreigner who intentionally misuses or carries out activities that are not in accordance with the intent and purpose of granting the Stay Permit granted to him, shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). (*Undang-undang Nomor 6 Tahun 2011 tentang Keimigrasian*, no date)

For the sake of law enforcement and maintaining the dignity of the state, including the dignity of state gatekeepers. Therefore, foreign nationals who misuse immigration permits are subject to actions in the form of:

**a. Juridical action**

A juridical action is an act against a foreign citizen who intentionally abuses the intent and purpose of the residence permit he has, therefore he must attend a trial in court by a judge, or it could be a juridical action which is an act (*projustisia*) which goes through a series of investigative actions which are included in the criminal justice system process, which has several stages, namely:

- 1) Investigation.
- 2) Inquiries.
- 3) Prosecution.

And if found guilty, they will be subject to criminal sanctions in accordance with the provisions of the applicable laws and regulations, then after the foreign citizen has finished serving his criminal period, then an act of deportation is carried out to the country of origin and included in the list of deterrence, which means the foreign citizen is not allowed to do so. enter the territory of Indonesia within the time limit determined by law.

**b. Administrative legal action.**

Administrative legal action is an administrative sanction from immigration for violations committed by foreign nationals, and of course this action does not go through an investigation or outside the judicial process but is directly subject to administrative action. (Turahea, 2014) Immigration administrative actions regulated in Law Number 6 of 2011 article 75 number 2 which contains Immigration Administrative Actions as referred to in paragraph (1) can be in the form of:

- 1) Inclusion in the list of Prevention or Deterrence;
- 2) Limitation, change, or cancellation of Stay Permit;
- 3) Prohibition to be in one or several certain places in the Indonesian Territory;
- 4) The obligation to reside in a certain place in the Indonesian Territory;
- 5) Imposition of expense charges; and/or
- 6) Deportation from Indonesian Territory. (*Undang-undang Nomor 6 Tahun 2011 tentang Keimigrasian*, no date)

As based on the description above, immigration law regulates two forms of law enforcement, namely law enforcement through the judicial process (*projustisia*) and administrative law enforcement through Immigration Actions and in immigration

actions the authority is held by immigration officials (Immigration Civil Servants Investigators).

## **2. What are the Obstacles In Law Enforcement On Criminal Acts Of Abuse Of Immigration Stay Permit**

Every implementation of an activity of course has obstacles even though it has been planned in such a way as well, as well as law enforcement against criminal acts of abuse of immigration residence permits which may have obstacles. The following are the obstacles to law enforcement against criminal acts of abuse of immigration residence permits:

- a. Supervision of foreign nationals carried out by immigration officers has not been maximized, both in knowing what activities and the existence of these foreign nationals are and the lack or lack of coordination or cooperation between agencies in enforcing the law on immigration crimes.
- b. The implementation of applicable regulations and policies, in this case law enforcement for foreign nationals is carried out by Immigration and is still experiencing problems regarding its human resources due to the limitations of Civil Servant Investigators (PPNS) and the lack of Immigration PPNS who master foreign languages other than English. In fact, in general, foreign nationals who are examined do not speak English. So that when the immigration PPNS conducts an examination of cases against foreign nationals from certain countries that they are handling, they experience difficulties.
- c. There are still inadequate facilities and facilities to support the smooth operation of law enforcement operations against misuse of immigration residence permits, budget allocation in terms of services to the community, as well as law enforcement against misuse of immigration permits for the sake of order and security so that there are obstacles in activities. This also causes the task of immigration investigations to not be carried out optimally regarding reports related to criminal acts regarding immigration, misuse of permits, seeking information and evidence, summoning, examining, examining, arresting and detaining someone. great cost too time.
- d. There is still a lack of awareness or role from the community to cooperate with immigration authorities in reporting or making complaints regarding the presence or activities of foreign nationals who violate applicable laws around the community, this is due to the lack of care and ignorance of the community.

## **D. Conclusion**

Law enforcement is a series of processes carried out through various efforts so that legal norms can actually be enforced and functioned as guidelines for people in state life. In immigration law, every foreigner who violates immigration regulations will be subject to immigration action, in the case of a criminal act of misuse of immigration residence permits, subject to legal action or through judicial processes (projustisia) and administrative actions through immigration administration actions. As for the obstacles when enforcing the law against the criminal act of misuse of immigration residence permits, in the form of not yet maximal supervision of foreign nationals, each lack of human resources in terms of carrying out law enforcement, such as the lack of immigration PPNS and still inadequate facilities and facilities to

support fluency in law enforcement operational activities and lack of awareness or role of the community to cooperate with immigration authorities.

Actions that can be taken to overcome obstacles related to law enforcement against criminal acts of abuse of immigration residence permits are:

1. Increase the intensity of supervision of foreign nationals in order to comply with the applicable rules and improve coordination and cooperation between relevant agencies, especially the police in enforcing the law on immigration crimes.
2. Increasing the number of immigration officers and immigration PPNS who are tasked with enforcing immigration law and providing language translators or it could be by providing foreign language training other than English to immigration officers in order to support the investigation process handled by immigration PPNS.
3. Increase the capacity, professionalism and integrity of PPNS through increasing human resources in the form of training or the like as well as coordination between investigative agencies. With this activity, it can have a positive impact on PPNS Immigration itself, namely PPNS Immigration can complete each case file with a time that is not in the investigation process.
4. Conducting outreach to the public regarding immigration laws and other related regulations in order to raise public awareness to cooperate with immigration authorities in conveying information related to foreign nationals.

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