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Analysis Of Weakness In Enforcement Of Law Number 6 Of 2011 Concerning Immigration From Routine Activity Theory

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ABSTRACT

Law Number 6 of 2011 concerning Immigration regulates immigration law enforcement, both immigration administratif acts and immigration crimes. The implementation of immigration law enforcement is carried out by immigration officials who carry out their duties based on the applicable laws and regulations. However, the implementation of the implementation of Law Number 6 of 2011 cannot be said to be effective and in accordance with the reality. Today, the gap between das sollen and das sein in the application and enforcement of Law Number 6 of 2011, is so obvious that it is considered a routine activity. So, the formulation of the problem that will be examined in this paper is related to why there can be an application of the theory of routine activities in Law number 6 of 2011 and what is the effect of the theory of routine activities in immigration law enforcement in Law number 6 of 2011. This writing uses a qualitative research method with a qualitative approach. qualitative descriptive and data collection techniques carried out in a combined manner, namely inductive/qualitative. From the results of the study, it is known that the theory of routine activities in law enforcement as stipulated in Law No. 6 of 2011 resulted in many foreigners not complying with immigration rules properly due to the lack of strict enforcement of the applicable law.

ABSTRAK

Undang-undang Nomor 6 Tahun 2011 tentang keimigrasian mengatur hal penegakan hukum keimigrasian baik tindak administratif keimigrasian maupun tindak pidana keimigrasian. Pelaksanaan penegakan hukum keimigrasian, dilaksanakan oleh pejabat imigrasi yang mengemban tugasnya berdasarkan peraturan perundang-undangan yang berlaku. Namun, implementasi penerapan Undang-undang Nomor 6 Tahun 2011 belum dapat dikatakan efektif dan sesuai dengan kenyataannya. Dewasa ini, ketimpangan antara *das sollen* dan *das sein* pada penerapan dan penegakan Undang-undang Nomor 6 Tahun 2011, sangat terlihat jelas sehingga sudah dianggap sebagai suatu aktivitas rutin. Maka, rumusan masalah yang akan diteliti dalam tulisan ini adalah terkait mengapa bisa terdapat penerapan teori aktivitas rutin pada UU nomor 6 Tahun 2011 dan apa pengaruh teori aktivitas rutin dalam penegakan hukum keimigrasian dalam UU nomor 6 Tahun 2011. Penulisan ini menggunakan metode penelitian kualitatif dengan pendekatan deskriptif kualitatif dan tekhnik pengumpulan data yang dilakukan secara gabungan, yaitu induktif/kualitatif. Dari hasil penelitian, diketahui bahwa adanya teori aktivitas rutin dalam penegakan hukum yang tertuang di dalam Undang-undang Nomor 6 Tahun 2011 mengakibatkan banyaknya Orang Asing yang tidak mematuhi aturan keimigrasian dengan baik karena kurang tegasnya penegakan hukum yang berlaku.

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I. INTRODUCTION

Routine activity theory, first formulated by Lawrence E. Cohen and Marcus Felson (1979) and later developed by Felson, is one of the most cited and influential theoretical constructs in criminology and crime science more broadly (Miller, 2014). In their initial formulation, Cohen and Felson postulated that changes in the structure of people's daily activity patterns in cities after World War II could explain the increase in crime that had occurred, by leading studies of the time. Routine activity theory is an attempt to identify, at a macro level, criminal activity and its patterns through explaining changing trends in crime rates (Cohen and Felson, 1979). It is based on criminal events, the distribution and classification in space and time of the minimal elements that compose them, not on the search for the motives of the perpetrators (Tilley, 2009). Their hypothesis shows that the impact of modernization that occurred at the wrong time has facilitated the formation of convergence in space and time which provides opportunities for perpetrators with the aim of committing crimes against targets or something suitable without the presence of a competent guardian. The basis of routine activity theory is that most crimes are minor cases and are not reported to the police. Crime is neither spectacular nor dramatic. These are all common occurrences and happen all the time.

Routine activity theory explains crime events through three important elements that converge in space and time in the course of daily activities: (a) potential perpetrators with the capacity to commit crimes; (b) suitable targets or victims; and finally (c) there is no guardian capable of protecting the target and victim (Nainggolan, 2018). From the point of view of immigration itself, the guarantor can be categorized as a guardian. In Law Number 6 of 2011 concerning Immigration, the definition of a guarantor is written, namely a person or corporation who is responsible for the existence and activities of foreigners while in Indonesian territory. So, in this case a person who becomes the guarantor for the foreigner while in Indonesia is also obliged to report any changes to the data of the foreigner he guarantees. However, in practice, there are still guarantors who do not report changes to the data. Thus, many foreigners commit crimes or violate immigration regulations. Likewise, immigration officials as immigration law enforcers themselves have not been able to enforce the law in practice in accordance with written law.

In law enforcement carried out by immigration officials, we can still see the Routine Activity Theory (Rompas et al., 2021). A mistake made by both foreigners and Indonesian citizens who should be subject to criminal articles, but is often processed by the TAK (Immigration Administrative Actions) process. The criminal articles contained in Chapter XI of Law Number 6 of 2011 concerning Immigration are often not used in the law enforcement process and are replaced with Chapter VII of Law Number 6 of 2011 concerning Immigration which contains TAK (Immigration Administrative Actions). . Therefore, in this study, the author wants to examine why, how, and what is the effect of Routine Activity Theory if it continues to exist in immigration law enforcement.

Based on the above background, the formulation of the problems raised in this study are as follows a) Why is there a routine activity theory in the implementation of Law number 6 of 2011 concerning Immigration? b) How is the application of routine activity theory to the implementation of Law Number 6 of 2011 concerning Immigration? c) What is the influence of routine activity theory in the implementation of Law number 6 of 2011 concerning Immigration?

II. RESEARCH METHOD

This study uses a qualitative research method with a qualitative descriptive approach. Writing in this study will illustrate, describe and analyze a routine activity that is considered normal in the lack of strict enforcement of immigration law in Law Number 6 of 2011 concerning Immigration. The data collection method in this study was carried out in a combined manner, the data was analyzed in an inductive/qualitative manner, the results emphasized general meaning (Anggito & Setiawan, 2018). Data collection techniques were carried out using secondary data collection methods by collecting materials in the form of laws and regulations, library materials (books, scientific papers, articles),

websites and other secondary data sources that are still relevant to the topic of discussion in this study.

The data analysis technique in this study went through 4 stages: first, data collection was carried out by collecting data and information related to immigration law enforcement originating from Law Number 6 of 2011 concerning Immigration, library materials (books, scientific papers, articles), websites and other data sources that are still relevant to the topic of this research discussion. Second, data reduction is done by simplifying and categorizing data whose information is related to the topic of this study. The large number and complexity of the data requires a reduction stage to select information and data that is relevant to the ultimate research objective and to facilitate drawing conclusions. Third, data presentation is done by collecting data that is arranged systematically so that the information and data presented can be organized and arranged in a relationship pattern and easy to understand. Fourth, conclusion and verification is the final stage by looking at the results of data reduction and presentation that refers to the purpose of analysis. This stage is carried out by looking for the meaning of the information and data collected by looking for relationships, similarities, and differences so that conclusions can be drawn as answers to the problem of the topic of this research discussion. Verification is carried out so that the assessment of the suitability of information and data in the data presentation stage is accurate and objective.

III. RESULTS AND DISCUSSION

Ultimum Remedium is a legal term commonly used and interpreted as the application of criminal sanctions which is the ultimate (last) sanction in law enforcement (Priyono & Intarti, 2019). Sudikno said that legal principles are abstract in nature. Because of its nature, legal principles are generally not made in the form of concrete regulations or articles, such as:

a. Point d'interet point d'action is anyone who has a legal interest can file a lawsuit in court;
b. Restitutio in integrum is the return to the state as before;
c. In Dubio Pro Reo, in the event that there is doubt by the judge whether the defendant is wrong or not, the judge is obliged to give a decision in favor of the defendant;
d. Res judicata pro veritate habetur is what the judge decides must be considered correct;
e. Presumptio Iures de Iure means that everyone is deemed to know the laws or laws;
f. Protection for Protection of third parties with good faith.

The meaning of the principle of ultimum remedium when a case can be resolved through other channels (kinship, negotiation, mediation, civil or administrative law) should be done through other channels first.

According to Wirjono Prodjodikoro, rules or norms in the state legal order and state administrative law must first be responded to with administrative sanctions. Besides that, the norms in the civil law order must first be responded to with civil sanctions. It's just that if the administrative and civil sanctions are not sufficient to achieve the goal of rectifying the social balance, then criminal sanctions will also be held as the ultimate (last) or ultimum remedium. Criminal law can contain ultimum remedium due to the nature of criminal sanctions as the main weapon or criminal ultimum remedium when compared to civil sanctions or administrative sanctions. This nature creates a tendency to reduce the implementation of criminal sanctions. So, ultimum remedium is a term that describes the nature of a criminal sanction.

Apart from explaining it in criminal law, this term is also known in the settlement of legal disputes. Frans Hendra Winarta stated clearly that dispute resolution in business, such as buying and selling, banking, mining projects, oil and gas, energy, infrastructure, and so on, is usually carried out through litigation. In the litigation process, the parties are positioned against each other, besides that litigation dispute resolution is a means of ultimum remedium after other dispute resolution methods have not produced results. Basically there is no specific theory regarding the ultimum remedium of punishment. Ultimum remedium is a principle commonly used or associated with criminal law. The term ultimum remedium describes the nature contained in criminal law, namely as an option or final tool for settling cases.

As a final weapon (sanction) or ultimum remedium when compared to civil sanctions or administrative sanctions, it has harsh sanctions. One characteristic of the differences between criminal law and other laws, both public law and private law, is the issue of sanctions. Criminal sanctions are usually in the form of imprisonment and also confinement which makes the perpetrators of crimes must be competitive and separate from their families and society. And the most severe sanction and the last resort is the death penalty which separates the perpetrator from his real life.

This ultimum remedium has principles that are in the middle of morals and law, the second is that ultimum remedium is the principle of all legislative processes. One option to avoid criminalization is based on ultimum remedium, not when we enforce the law based on existing laws, articles already exist, so the police or prosecutors certainly cannot use this principle (Nugraha, 2021).

In laws and regulations as an example of tax regulations in Indonesia, there is no explicit definition of ultimum remedium. However, the application of ultimum remedium has emerged since the era of the first volume of tax reform in 1983 with implicit delivery. The law enacted basically has the aim of protecting the soul and honor of humans and property. When environmental pollution and damage has had a negative impact on human life and souls, such actions must be seen as actions that are contrary to morality and deserve to be subject to criminal sanctions. Therefore, several laws and regulations related to the management of natural resources or those directly related to the preservation of nature and the environment need to be revised. Revisions need to be made not only because acts of pollution and destruction of the environment are contrary to morals but also because following international developments which require that the function of criminal law in environmental crimes becomes primum remedium and no longer ultimum remedium. The use of criminal law is in the context of protecting the environment both in international, regional and domestic scope (Widayati, 2015).

In immigration, regulations have been made regarding the regulation of immigration traffic and also everything related to immigration in Law Number 06 of 2011 concerning Immigration. The immigration crime is international because it involves two countries. The crimes committed by the perpetrators certainly harmed the country, especially in this case Indonesia as a sovereign country, of course only useful people can enter the territory of the Indonesian state except for native Indonesian citizens. Therefore it is necessary to provide criminal sanctions which can provide a deterrent effect on the perpetrators.

Law enforcement has meaning as a means to make law the rule of human life. In immigration there are two immigration actions, namely criminal acts and administrative actions. Every implementation of law enforcement has a principle that accompanies it. The reason is because principles are the basic thoughts contained within and even behind the legal system itself (Atmadja, 2018). So that the principle has a function as the initial foundation for interpretation, as material for consideration in imposing sanctions, and as an analogy to legal construction. The principle of ultimum remedium is a principle that is often used in the implementation of immigration law, basically Indonesian immigration law is a state administration law that can be given criminal sanctions which are almost the same as criminal acts of corruption (Zenno, 2017). The use of this principle based on Indonesian immigration law has two actions, namely administrative and criminal. With these two sanction options, the application of immigration law can be carried out using the ultimum remedium principle.

Immigration law written in Law Number 6 of 2011 concerning Immigration from articles 113 to 136 regulates sanctions, which in almost all of the articles adhere to the principle of ultimum remedium. However, this principle is still a consideration in enforcing immigration law because there are many discrepancies with the implementation of immigration law but it is still frequently used. In its implementation, it is also necessary to pay attention to whether this has been effective or not in accordance with the sanctions given. In carrying out the law, immigration officials have different thoughts according to what they think, whether the policies they provide are appropriate or not. In enforcing immigration law, immigration officials also pay attention to the legal process that is given

starting from the aspect of fast, minimal cost, but still thinking about the principle of legal justice itself.

Talking about law enforcement that is fast, cheap, but still thinking about the principle of legal justice itself is very important to discuss. This is because when there is an immigration violation, the immigration official seeks to minimize the burden on the officers, given the limited human resources available. If an immigration violation is resolved through the Projusticia process, of course this will take quite a long time, even weeks, what's more, the cases handled are minor violations. And even sometimes the results are still unsatisfactory and not comparable to what is desired. In this regard, immigration officials more often implement administrative sanctions than criminal acts. The process of immigration administrative action is considered shorter, less costly and easier in the process of imposing sanctions. That is why most of the immigration actions are more administratively resolved.

The reason for the Routine Activity Theory in the implementation of the Act Number 6 of 2011 concerning Immigration

Protecting the territory of a country is the responsibility of all citizens who are managed by the government to protect them from threats that can destabilize the country. Indonesia as a country that has the charm of its natural beauty is one of the attractions for tourists to enter Indonesian territory. It was recorded that in August around 510,246 foreign nationals entered Indonesian territory for various purposes. From these results it is known that that month was the highest record for the passage of foreigners entering Indonesian territory. Most foreigners who enter Indonesian territory are for tourism purposes. Tourist destinations by foreigners certainly have positive things. through tourist visits by foreigners who come to Indonesia provide many positive influences for the country, one of which is an increase in the economy from the results of the exchange rate and also inflation. Then foreign tourists also increase foreign exchange earnings for the country, namely the creation of jobs which trigger an increase in the creation of the tourism industry in various regions in Indonesia.

The soaring number of immigration crossings in the Indonesian Territory builds legal awareness in the framework of law enforcement and the sovereignty of the unitary state of the Republic of Indonesia. Law as a set of norms made by society or rules that aim to shape the behavior of every human being so that society will feel at ease because it is protected by law. Legal subjects comply with existing rules solely for their own personal interests or also to avoid anything that results in punishment, fines, and also pain. However, self-interest is as strong as the sanctions given to lawbreakers. This proves that personal interests do not guarantee legal subjects comply with the law. As is the case in the field of immigration, there are rules for foreigners who are in Indonesian territory must have complete immigration documents. Even though foreigners have fulfilled the requirements to be able to be in Indonesia, a sanction cannot be avoided in the event of an immigration violation such as a foreigner who carries out activities that are not in accordance with the purpose of the visa, overstays, does not report a change of residence location, commits a crime and so on. . Unless the application of sanctions to perpetrators of law violations is not in accordance with the applicable written law, the pattern of application and enforcement of the law will change. This is because the law has the meaning that all actions that contain rules have coercive power, which means that if they are violated, they will be given real and strict sanctions.

The existence of foreign tourists coming to Indonesian territory is of course a demand for the state to make a series of legal regulations for foreign nationals while in Indonesian territory. In this case Immigration has a very important role in law enforcement for foreigners. Indonesian immigration law is Lex Specialis Derogat Legi Generali. This principle states that the law is specific in nature which will override general regulations. Law enforcement for every foreign citizen is of course regulated in Law Number 6 of 2011 concerning Immigration starting from the initial arrival, then while in Indonesian territory until leaving Indonesian territory.

Law enforcement as a process which is essentially a discretion in which there are decisions made and strictly regulated by the rule of law, and also has an element of personal judgement. Conceptually, the essence of law enforcement lies in the alignment of value relationships as outlined

in strong principles and solid attitudes in every action as a series of value developments at the final stage later. for this reason, the law is enforced to create social order, maintain and preserve life. Conceptions that have a philosophical basis require further explanation in order to appear more concrete.

Law also has a very broad or universal reach in which law can attach several theories and concepts in various aspects to individuals. In this case, if a foreign national commits an immigration violation, each immigration official has their own description regarding the law that will be enforced (Regar, 2021). So this also affects the law that has been established. In law enforcement, especially immigration, what has been stipulated (Das sollen) will be different from when it was implemented (Das Sein). This is possible because when immigration officials identify immigration violations, each immigration official has different thoughts depending on how they (immigration officials) respond to the law that will be given. In this case, immigration officials still apply the Routine Activity Theory in enforcing the immigration law itself. From the results of the author's research, this is due to a number of cases where there is a lack of evidence or evidence. In addition, in enforcing immigration law itself the principle of Ultimum Remedium still applies. Ultimum remedium is one of the principles contained in Indonesian criminal law which says that criminal law should be used as a last resort in terms of law enforcement. This is what makes the Routine Activity Theory still exist in enforcing immigration law by immigration officials.

Application of Routine Activity Theory in Law Number 6 of 2011 about Immigration

Crime is an active action according to the law. That is, a crime occurs when a legal subject violates the law either directly or indirectly. In immigration, crimes often occur because of international crossings carried out by foreigners and Indonesian citizens. From January to April, 1,033 foreign nationals committed immigration violations. The violations committed were none other than information on the location of their residence, overstaying, being in an area where they were not supposed to be, and even actions allegedly dangerous to security and public order. Of the thousands of foreigners who commit immigration violations, all of them are sanctioned by means of administrative measures. The reason is none other than that administrative action is easier by making arrests then deportation and ending with putting the foreigner's name on the blacklist. Even though there are several immigration violations that are not merely administrative actions because based on Law No. 6 of 2011 there are still criminal acts. So that violations committed by foreigners, the legal action given is no longer appropriate. If this continues to happen then the Routine Activity Theory will apply so that the effect also has an impact on law enforcement.

Indonesian immigration law cannot be separated from the obligation to comply with the elements of a law. According to Hartono (2012), there should be three elements in upholding the law that need attention, namely:

a. The Law Must Be Certain (rechtssicherheit): Existing laws must be obeyed and implemented. Everyone basically certainly hopes that the law will be implemented in the event that a real (concrete) event occurs. There is no reason for the law not to be implemented if every citizen wants legal certainty. What kind of violation of the law is committed by each legal subject, the punishment is imposed in accordance with the provisions. Like "fiat justicia et pereat mundus" (even though the world will collapse, the law must be upheld) that is what legal subjects expect in expecting legal certainty. Basically legal certainty is justifiable (law-abiding) protection against any arbitrary actions towards other people, which means that a person will be fulfilled with inner satisfaction after the punishment is imposed.
b. Laws can provide benefits (zweckmässigkeit): Laws made by the government have the public's hope that the law will provide benefits. Laws are made to provide happiness which has a big impact which has an impact on the whole community. The measure of the usefulness of the Law is the greatest happiness. Judgment about the fairness of the law or also the good and bad judgment of the law is seen from whether the legal subject receives happiness or not. Therefore the implementation and enforcement of the law can provide benefits to everyone. Don't let law enforcement actually create anxiety for the community so that people don't believe in the law.

c. The law provides justice (gerechtigkeit): People who have an interest in law enforcement will certainly pay attention to the existence of legal justice. Of course one's legal interests want to be fully met. At present the state must change its legal political style, which was originally legal certainty and then justice became upheld justice, certainty, and accompanied by the benefits of law. The purpose of changing the style of the law is so that people can feel the real legal justice. Law cannot be said to be synonymous with justice. Because basically the law is general in nature then binds people, and is generalizing. For example, everyone who commits a crime or violates the law must be punished. But on the contrary, justice is subjective, individual, and unequal.

From this explanation it is necessary that the legal provisions made must be carried out in accordance with what has been mutually agreed upon.

The Influence of Routine Activity Theory in Law Enforcement of Law Number 6 of 2011 concerning Immigration

The connection between the concept of existing regulations as legal products and the reality of regulations greatly influences the attachment of legal instruments to legal subjects. Existing regulations are often ignored, so in fact regulations do not always decide cases of violations or crimes that arise. Some laws are enforced, some laws are rarely enforced, and others are not enforced at all. How the law is enforced also depends on the will and views of stakeholders, so that it can influence public skepticism of the law. A skeptical public attitude will make it difficult to comply with legal subjects and the law will weaken (Friedman, 2019).

A law can be categorized as successful or failed to be seen from the suitability of the legal impact with its positive goals, while the positive goals of a law are seen from the suitability of the behavior of legal subjects with the applicable law (Friedman, 2019). The Immigration Law enforced by the Indonesian government which was established in Law Number 6 of 2011 concerning Immigration is the basis for Indonesian immigration regulations which are reviewed for suitability of the impact with its positive goals. Settlement of cases of immigration problems and violations is carried out based on Law Number 6 of 2011 concerning Immigration in imposing accusations and sanctions. However, due to the trivial attitude of law enforcement actors and people who are not familiar with the law, the meaning of immigration law itself becomes dry in the eyes of the law. The strong desire to escape legal action for violating immigration laws is also another cause for behavior related to routine activity theory. The perpetrators will do everything possible so that they are not questioned and given sanctions by covering the mouths of witnesses who know about the events of a case that they are doing. After a case involving a violation of immigration law is unfairly resolved according to the law, other cases with similar problems will emerge.

Not only on immigration law enforcement but also on supervisory practices. Meanwhile, the main root of immigration law enforcement is a form of national defense from the results of immigration control carried out. The findings of a study on the lack of understanding of Indonesian Immigration Human Resources (HR) with weak immigration supervision illustrate the high demand for the professionalism of immigration officers. This weakness is caused by various things, namely the good faith of officers, budget allocation, regional autonomy, coordination and existing regulations. As happened in the Central Java region, there were 12 foreigners who committed immigration violations in 2021. The violations committed were in the form of dangerous actions that could disrupt public order and overstay. The surrounding community is disturbed by the comfort of their environment and the violations committed by foreigners occur repeatedly from time to time. From this information, the concept was found that not all problems can be solved only with limited administrative sanctions, moreover there are dangerous acts committed by foreigners. Actions that harm and endanger public order can be carried out by criminal acts of immigration so that the world community will be even more careful in taking action when in Indonesian territory. This has become one of the major challenges for the realm of Indonesian immigration in dealing with prevention and tackling the possibility of the emergence of behavioral attitudes of executors and society that refer to routine activity theory.

IV. CONCLUSION

Indonesia has laws to determine administrative sanctions and commit criminal acts against perpetrators who violate immigration laws. Immigration supervision and immigration enforcement, which are regulated as a legal basis in Law Number 6 of 2011 concerning Immigration, are sufficiently strong reasons for law enforcers to carry out the law in accordance with their regulations. However, settlement of immigration violations is often carried out administratively because it is not uncommon for immigration officials to generalize any legal action for immigration violators committed by foreigners or Indonesian citizens, even for violations deemed detrimental to Indonesia. So that immigration violations have the potential to be considered normal (Routine Activity Theory). This assumption that is categorized as normal causes a lack of legal firmness that will be given to foreigners later. This has led to the emergence of a trust issue for Indonesian citizens and foreigners from various countries regarding the strength of Indonesian immigration law. World theory through the perception of criminal law on the power of Indonesian immigration law becomes frail and skeptical if immigration violations that occur in Indonesia will be resolved according to law by upholding justice for everyone. Tolerance towards various actions that deviate from the rules is a threat to the country itself. The reason was that the perpetrator felt that his party was not being threatened and was not being judged sharply by other parties by solving material problems.

Thus, the attitude of the behavior of the immigration legal instruments and the people of Indonesia must be critical and able to reach the implementation of immigration in order to meet the needs of the nation's defense and realize the politics of Indonesian immigration law as stipulated in Law Number 6 of 2011 concerning Immigration. The existence of Routine Activity Theory is a thorn in the flesh of immigration law which has been designed in such a way, Law Number 6 of 2011 concerning Immigration has become shaky due to the actions of law enforcement officers and the legal community itself.

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