

Implementation Of Law Enforcement And Immigration Control Of Foreign Citizens

Ilham Zico Pratama

Immigration Law Study Program, Immigration Polytechnic

Email:Ilhamzico.98@gmail.com

Welby Ilham Muwaffaq

Immigration Law Study Program, Immigration Polytechnic

Email:welbyilham2@gmail.com

Sadra Tri Agraeny

Immigration Law Study Program, Immigration Polytechnic

Email:sadratriagraeny26@gmail.com

ABSTRACT

Immigration is an agency that has the authority to carry out supervision of the traffic of anyone entering and leaving the territory of Indonesia. the Indonesian government opened immigration channels as an effort to increase the country's foreign exchange to increase economic growth. So that the government can grant visa freedom only by giving the stamp and initials given by the official. This is what is often misused by some foreign nationals who do activities in Indonesia that are not in accordance with the immigration rules that have been set. This study aims to describe law enforcement and immigration control of foreign nationals in Samarinda. In the implementation that has been running so far it has been quite good, but has not produced maximum results. To fulfill this goal, there will be 3 ways to supervise foreign countries, namely: Administrative Supervision, Field Supervision and PORA TEAM Coordination. This research will also describe several laws related to immigration law enforcement for foreign nationals.

Keywords: *Immigration control; foreigners; law enforcement;immigration.*

INTRODUCTION

According to Article 1 number (1) of Law no. 6 of 2011 defines Immigration as a matter concerning the traffic of people entering and leaving the territory of Indonesia with supervision in order to maintain state sovereignty. Indonesia is a sovereign country with a population that is generally a member of this country. The population or the people have an important position as fulfilling the criteria for a nation to become a state.

According to the 1945 Constitution of the Republic of Indonesia, Chapter X concerning Citizens and Residents Article 26 paragraph (1) states that: "Those who become citizens are Indonesian people and people of other nations which are legalized by law as a citizen". According to Samidjo, residents who inhabit a country from a legal point of view consist of citizens (*staatsburgers*), and foreigners who are other than natives in one country's territory (*niet-ingezetenen*), people who are not Indonesian citizens, not native to Indonesia, as well as people who are not Indonesian citizens. Indonesians who have relinquished their citizenship

and are currently in the territory of Indonesia are treated as foreigners.¹ The presence of foreigners who enter Indonesia can bring positive things.

The entry and exit of foreigners into Indonesia should be monitored under applicable procedures. Supervision of foreigners is to supervise foreigners entering and leaving, their existence and activities while in the territory of the Republic of Indonesia. To realize the supervision of foreigners, we need legal instruments and strong cooperation to enforce the law and supervise foreigners who enter the territory of Indonesia. What is meant by foreigners here are people who are not Indonesian citizens. Foreigners are also divided into two,

Immigration law is one of the laws that apply in Indonesia, and is a sub-system of state administrative law. The function of this immigration law is as the administration of state government, and because of that this law is included in the executive administration, it can be said as state administrative law. The Indonesian government establishes the principles, service procedures and supervision of the national interest for foreigners entering and leaving the territory of Indonesia to protect national interests and sovereignty. as stipulated in Law No. 6 of 2011 concerning immigration, changes from Law no. 9 of 1992 concerning immigration.

Immigration has an important function and becomes a strategy for carrying out its duties and functions as an institution that provides direct and indirect services to those who wish to immigrate, such as travel documents and various immigration facilities for foreign nationals. Among them are granting visas, residence permits and immigration status, immigration investigations and prosecutions. Based on Law no. 6 of 2011 concerning immigration, violations committed by foreigners have been anticipated with other arrangements, namely Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011, Government Regulation Number 38 of 2005 concerning Amendments to Immigration Regulations,

Supervision of foreigners in the territory of Indonesia can be realized by supervising foreigners who enter, are present, carry out activities and leave the territory of Indonesia. If there is a criminal law action against the foreigner, then the problem is part of a series of Integrated Criminal Justice Systems. For this reason, this research is to see how the law enforcement and immigration control of foreigners' residence permits in Indonesia is carried out. It will also focus on how to determine a residence permit in Indonesia per Law Number 6 of 2011.

METHOD

Approach

This type of research in scientific journals is through qualitative descriptive research to provide explanations based on the variables studied. According to who argues that descriptive research is research conducted with independent variables, namely by comparing and connecting with other variables.²

Method of collecting data

Here the author will also present data based on two sources, namely primary data and secondary data.

Data analysis technique

¹ Sihombing, Sihar. (2013). *Hukum Keimigrasian Dalam Hukum Indonesia*. Bandung: Nuansa Aulia. p. 5.

² Sugiyono. (2005). *Memahami Penelitian Kualitatif*, Bandung: Alfabeta. Metode Penelitian Kuantitatif, Kualitatif, R&D. Bandung: CV Alfabeta. p.7.

Data collection using two techniques, namely library research techniques and field studies. Literature study, namely researchers will study and explore concepts and theories that discuss the research material this time. Furthermore, researchers will collect data from the literature, dictionaries, articles, research results and others. while field study research, namely researchers will take data directly to the object of research in the field, including through interview, observation and documentation techniques. After all the data has been collected, the writer will analyze the data material and reduce the data to draw conclusions (verification).

ANALYSIS AND DISCUSSION

Supervision

A. Definition of Supervision

According to Fachruddin (2006) the word “Supervision” comes from the word watch out, which means, among other things, “guarding”. The term “Supervision” is known in management and administrative sciences, namely as one element in management activities. According to Siagian (2003) “Supervision is the process of observing and carrying out all organizational activities to ensure that all work being carried out goes according to the established plan”. Meanwhile, according to Dale in Winardi (2000: 224) defines that supervision is not only limited to supervising activities, but also to improve and straighten goals that have been previously planned.

Based on some of the theories presented above, we can conclude that supervision is a basic processing activity and contains meaning to improve and straighten so that everything is in accordance with the planned objectives.³

B. Types of Supervision

The division of types of supervision based on Siagian (2003) is as follows:

1. Inherent supervision or direct supervision is carried out by leadership officials, as a nimble planner, a reliable organization and as the person in charge of each leader must be an effective supervisor.
2. Functional supervision is carried out by supervisory officers within a certain agency or can also be carried out by officers outside the agency but still within the government. In addition, there is also a Management Control System (MSS) which includes elements of the organization and work procedures, work plans or procedures, laws and regulations which are systems to prevent irregularities. In this monitoring process, it should be noted that an irregular situation will make it difficult for deviations to occur. To prevent a deviation, management openness is needed.⁴

IMMIGRATION

A. Definition of Immigration

Immigration comes from the Latin word Migration which means the movement of people from one place or country to another. Then there is the word Emigratio which means the movement of people from one region or country to another region or country. On the other hand, Immigration in Latin has the meaning as the movement of the population of one country

³ Fachruddin, Irfan. (2006). *Pengawasan Peradilan Administrasi Terhadap Tindakan Pemerintah*. Bandung: PT Alumni. p. 5.

⁴ Siagian, P. Sondang. (2003). *Organisasi dan Prilaku Organisasi*. Jakarta: Gunung Agung. Filsafat Administrasi, Edisi Revisi. Jakarta: Bumi aksara. p. 22.

into another region or country. In essence, emigration and immigration is the movement of people between countries.

According to Law Number 6 of 2011 concerning Immigration, it defines Immigration as a matter of traffic of people entering or leaving the Indonesian Territory and its supervision in the context of upholding the sovereignty of the State. Meanwhile, according to Iman (2004) Immigration is a series of activities in the provision of services and law enforcement as well as security against traffic in and out of everyone from and into the territory of the Republic of Indonesia, as well as supervision of the presence of foreign nationals in the territory of the Republic of Indonesia.⁵

B. Three Immigration Functions

According to Faith (2004) operationally the role of immigration can be translated into the concept of the Three Immigration Functions, namely:

1. Community Service Function This Immigration function is the function of government or administration that reflects the aspect of excellent service in the field of immigration to both Indonesian citizens and foreigners.
2. Law Enforcement Functions In the implementation of immigration duties, the entire rule of immigration law is enforced on everyone who is in the jurisdiction of the Republic of Indonesia, whether Indonesian citizens or foreigners. Immigration law enforcement against foreigners is aimed at the following problems: (1) Falsification of the identity of foreigners; (2) Registration of foreigners and granting of foreigner supervision books, (3) Misuse of residence permits; (5) Monitoring/raid, and (6) geographic vulnerability of immigration in crossings.
3. The Immigration Security function serves as a gatekeeper of the State. It is said so because immigration is the first and last institution that screens the arrival and departure of foreign nationals to and from the territory of the Republic of Indonesia.⁶

The Concept of Foreign Citizens Immigration Control

In this case, the targets of supervision are foreigners who are in the territory of the State of Indonesia and foreigners who are suspected of committing immigration irregularities or violations. Every foreigner who enters or leaves the Indonesian legal territory is required to provide identity, arrival or departure information and other necessary information to the Immigration Officer at the Immigration Checkpoint. Supervision of foreigners in the territory of Indonesia in the form of supervision of foreigners who enter, exist, activities and leave the territory of Indonesia, among others, can give rise to 2 (two) possibilities, namely: First, foreigners who comply with applicable regulations and do not carry out activities that are harmful to security and public order, this does not cause immigration or state problems. Second,

1. Criminal law actions in the form of immigration investigations which are part of a series of criminal justice systems (trials, prosecutions, investigations) and or
2. State administrative legal action in the form of immigration action is an administrative action in the field of immigration outside the judicial process.

Included as part of this immigration act is the deportation of foreigners to leave the territory of the Unitary State of the Republic of Indonesia (Marbun SF 2007). Supervision of foreigners as a series of activities has been initiated and carried out by representatives of the Republic of Indonesia abroad when receiving visa applications, further supervision is carried out by immigration officials at TPI, when immigration officials with their autonomous authority

⁵ Santoso, M. Iman. (2004). *Perspektif Imigrasi Dalam Pembangunan Ekonomi dan Ketahanan Nasional*. Jakarta: Universitas Indonesia (UI-Press). p. 10.

⁶ Moeleong, Lexy J. (2004). *Metodologi Penelitian Kualitatif*. Bandung: PT Remaja Rosdakarya. p. 36.

decide to refuse or grant entry permits, then given a residence permit per the visa he has, then the supervision shifts to the immigration office whose work area includes the residence of the foreigner.⁷

Forms of Supervision of Foreign Citizens

Based on the opinion of Sihar Sihombing (2013) who divides the form of supervision of foreign nationals into two tigers, namely:

1. Administrative Supervision, namely supervision by examining letters and documents in the form of recording, collecting, processing data, and presenting as well as distributing information manually and electronically regarding traffic on the existence and activities of the foreign nationals.
2. Field Supervision, namely by monitoring raids, collecting information on the search for people and evidence related to immigration. This type of supervision can be carried out routinely and in the form of operations.

In carrying out immigration control activities against foreign nationals, the government that has the authority to carry out such supervision is the Regional Office of the Ministry of Law and Human Rights, as well as the Technical Implementing Unit.⁸

Supervision of Foreign Citizens

Supervision of foreign nationals is an effort to improve national development and maintain national sovereignty and resilience so that it runs dynamically. Supervision of foreign nationals in Indonesia can be carried out in several ways, namely:

1. Administrative Supervision

Administrative supervision is carried out by conducting research on files or documents related to foreign nationals entering Indonesia, such as passports, visas and remaining residence permits for foreign workers and block checks. This administrative supervision can be done by collecting data, researching and checking the letters and application documents at the Immigration Office.

2. Field Monitoring

Field supervision is a series that is carried out after administrative supervision. Here, further examination will be carried out from the findings of administrative supervision regarding irregularities in the residence permit or the period of stay. The implementation of this field supervision can be carried out routinely and incidentally.

3. TIMPORA Coordination

TIMPORA is tasked with exchanging information between related information and providing advice and considerations to government agencies regarding foreign nationals in Indonesia. PORA TEAM is allowed to carry out joint operations if necessary. The scope of duties of the PORA TEAM includes; Supervision aimed at the possibility of violations of licensing abuse and granting immigration permits as well as supervision of illegal immigrants.

Supervision of the Existence of Foreigners in the Territory of the Republic of Indonesia based on Law Number 6 the Year 2011 concerning Immigration in the General Explanation section.

Law Number 6 of 2011 concerning Immigration stipulates that for foreigners, services and supervision in the field of immigration are carried out with the principle of being “selective” (selective policy). Based on this principle, only foreigners who are allowed to enter Indonesia are foreigners who provide benefits for the welfare of the people, nation and state of the Republic of Indonesia and do not endanger security and order, nor are they hostile towards

⁷ Santoso, M. Iman. (2004). *Perspektif Imigrasi Dalam Pembangunan Ekonomi dan Ketahanan Nasional*. Jakarta: Universitas Indonesia (UI-Press). p. 23.

⁸ Sihombing, Sihar. (2013). *Hukum Keimigrasian Dalam Hukum Indonesia*. Bandung: Nuansa Aulia. p. 11.

the people or the Indonesian State based on Pancasila and the 1945 Constitution. 1945 Constitution. Immigration control is a supervision of foreigners, immigration control includes the observation and inspection of all activities starting from the planning and presence of foreigners in Indonesia until leaving Indonesia.

This is confirmed in Article 66 paragraph (2), Law Number 6 of 2011 concerning Immigration, namely: Supervision of foreigners in Indonesia includes: a) Supervision of the traffic of foreigners entering or leaving the territory of Indonesia. b) Supervision of the presence and activities of foreigners in the territory of Indonesia. Data collection utilizing foreigner supervision is carried out for every foreigner who enters or leaves the territory of the Republic of Indonesia, is in the territory of the Republic of Indonesia, carries out activities in the territory of the Republic of Indonesia.

According to the Law, all the law enforcement and control of immigrational nationals is the same to the whole region in Indonesia. Specifically, the term "Indonesia" indicates that all places that are under control of Indonesia must implement the same procedure of supervision and arrest. However, the sanctions or penalties to the nationals will vary depending on the offence and nationality. Not all foreigners have the same law offence a comparison should be conducted. Moreover, Indonesia also have different levels of immigration office. Some cases will be compared to a case in Samarinda to know various kinds of offences and penalties.

The first case in accordance with the analysis refers to law enforcement and control of immigrational nationals in Samarinda from a study by Setiawan, (2013). This study discussed about law enforcement and control of immigrational nationals. Based on this, the immigration office stated that they are in charge of supervising foreign nationals and ready to deport them to their country.⁹ Another case happening located in Wonosobo that there were some nationals such as from Italy, Malaysia, South Korea, and Taiwan Most of the nationals offended the law in Law Number 6 Year 2011 article 122 point a where it regulates a rule for people who deliberately use the permission of staying in a country for different purposes. As a consequence, they were in hold list and deported to their own country.¹⁰

Another case also comes from the study by Sanusi (2016) that discuss about law enforcement and control of immigrational nationals in Lampung. A case in Bandar Lampung ever happened where a chinese national named Chen Qinpeng and Jing Cilu came to Indonesia. At first, they just arrived at Soekarno Hatta airport only for vacation with the use of vacational permission. However, it was known that they did not go on a vacation but worked at PT. Radema Graha Saranan and even gave training. So expect to do immigration violations as referred to in Article 122 letter a in conjunction with Article 75 paragraph (2) letters a, b, and f of Law Number 6 of 2011 concerning Immigration and related actions immigration administration in the form of deterrence, requesting a residence permit, and deportation (Sanusi, 2016).¹¹

The next case was from a study by Putra; Amalia; & Yudhana (2021) discussed about law enforcement and control of immigrational nationals in Bali. Bali has become a tourism city for long decades where this city is most visited by tourists compared to other cities. From 2010 to 2012, human smuggling was still going but it was not regulated yet until 2011. It is finally regulated based on Law No. 6/2011. Finally, the offenders were sentenced to 5 to 15 years

⁹ Setiawan Hendra. (2013). "Efektivitas Pengawasan Orang Asing Pada wilayah Kerja Kantor Imigrasi Kelas I Samarinda". *Program Magister Ilmu Hukum*. Malang: Universitas Brawijaya. p.1. Page 3.

¹⁰ Puspitasari, Vidy Gayuh. (2019). *Penegakan Hukum Pelanggaran Keimigrasian oleh Warga Negara Asing di Kantor Imigrasi Kelas II Non TPI Wonosobo*. Yogyakarta: Universitas Islam Indonesia. p. 8.

¹¹ Sanusi, Albert. (2016). "Penegakan Hukum terhadap Tindak Pidana Penyalahgunaan Izin Tinggal Keimigrasian". *Fiat Justicia*, Vol 10 no 2.p.221-412. p. 12.

maximum imprisonment with fine Rp 500 million (euro 34.273) and maximum IDR 1.500 million (€ 102.821).¹²

The last case was from a study by discussed about a crime from a Bengali People. This man intended to go to Malaysia directly with the help of someone called AS. There were actually more Bengali People to go to Malaysia. However, based on their confession, it was only AS who wanted to send them to Malaysia. He was charged with the Law Number 6 Article 120 of 2011.

The permission of residence in Indonesia is regulated in Law Number 6 Article 120 of 2011. It must be in accordance with the purpose and intention of the foreign nationals coming to this country. Therefore, based on the law, people will be supervised and sentenced to this law for the residence permission. Therefore, the procedure is all the same but the execution or penalty is different.¹³

CONCLUSION

Based on the results of research that has been carried out by the author, it will be concluded that in the implementation of immigration control for foreign citizens as follows:

1. Supervision is carried out by examining documents of foreign nationals by conducting in-depth collection, research and examination. Followed by routine field supervision as a follow-up to administrative supervision. And the last is to work together with relevant agencies to carry out supervision by cooperating and coordinating in supervising the presence of foreign nationals in Indonesia.
2. The target of supervision of foreign nationals must include the presence of traffic of foreign nationals and in accordance with the permits that have been set. If there is a violation, it will be followed up by the Immigration Office in the local area.
3. Regulation of Law Number 6 of 2011 concerning Immigration stipulates that it will carry out selective supervision of foreign nationals who enter Indonesia and will be carried out in accordance with the 1945 Constitution concerning the sovereignty of all Indonesian people.

Suggestion

Based on the discussion and results of interviews that have been conducted by the author regarding the implementation of immigration control for foreign nationals, the author will convey some suggestions that would be useful for related parties as follows:

1. It is hoped that the Immigration Office in the local area can conduct socialization related to the Laws and Regulations and provide information transparently to all Indonesian people.
2. It is hoped that related parties will increase the number of personnel in the field of supervision and law enforcement in supervising foreign nationals so that they are easily accessible on a larger scale and minimize violations.
3. Maximizing the presence of the TIMPORA so that they can work together and coordinate with relevant agencies regarding surveillance activities against foreign nationals and maximize the information that is shared between related agencies.

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¹³ Arikson. (2020). Tinjauan Pelaksanaan Tindak Pidana Keimigrasian terhadap Undang-Undang Nomor 6 Tahun 2011 Pasal 120 Ayat 1 tentang Tindak Pidana Penyelundupan Manusia: Studi Kasus pada Kanor Imigrasi Kelas II TPI Dumai. Politeknik Imigrasi. p. 19.

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