

INTRODUCTION TO IMMIGRATION POLICY UNDER THE IMMIGRATION ACT NUMBER 6 YEAR 2011

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ABSTRACT

Human's life cannot be separated from the law, starting from the actions by individual even group, the way people's conducting their life, think, and punishment as a result of violation to the act. The purpose of this study is to introduce the basic provisions concerning the definition of Immigration law in Indonesia, the structure of the act and its implementation in the community by virtue of Immigration Act number 6 year 2011. The method of this study using normative legal research. The approach are statutory and conceptual approach. The result shows that the implementation of Migration Policy in Indonesia depends on the legal truth which is acceptable in the community such as customs which still considers binding in the society whether in the form of policy, principles, sanctions, etc.

Keywords: *Immigration, The Immigration Act Number 6 Year 2011*

INTRODUCTION

Human's life is inseparable from the laws that govern it. Starting from the actions and behavior of individual and groups, the way of how human's live and think, even the punishment that can be imposed to individual or groups who violate the provisions of the applicable law. Indonesia is state law; therefore, the people must acknowledge the system of Indonesian law and how to apply it.

One of the existing important laws by introduce the immigration act as a proponent of the country's priority programs which formed based on the country's need. This breakthrough shows from the job opportunity for the foreign workers and the state will determines the method on how to select certain foreign workers that fulfill the requirements of entry permit through the operational instruments of immigration law.

Immigration may be defined as a geographical movement of human, either individual or in group from the resource country to the receiving country with the aim of settling.¹ The motivation to migrate driven by the human's desire to receive unlimited peace and comfort

¹ Ajat Sudrajat Havid, *Formalitas Keimigrasian dalam Perspektif Sejarah*, Direktorat Jenderal Imigrasi, Jakarta: 2008, 175

from different environment. This is unavoidable and increasing for every period, due to the relations and open border between the countries.

Within this scope, the state presented as an actor that provides freedom of movement for its citizen and restricted the movement area. Country has the authority through its supreme power which must be obeyed and respected by the citizen and foreign citizen who stay in the sovereign country territory.

The Meaning Of “Introduction”

Prof. Dr. Peter Mahmud Marzuki, SH., M.Sc.,LLM. explain in Webster Dictionary, the word science defines as a “*Knowledge or a system of knowledge covering general truths, or the operation of general laws especially as obtained and tested through scientific method*”.² According to this statement, it can be understood that if knowledge is not tested through the “scientific method” then it cannot be called as science.

Further, The Webster Dictionary also describes the scientific method as “*principles and procedures for the systematic pursuit of knowledge involving the recognition and formulation of a problem, the collection of data through observation and experiment, and the formulation and testing of hypotheses*”.³ Therefore, scientific method can be concluded as systematic principle of knowledge related to the formulation of a problem, and as collection of data which tested through observation and experiment, as well as the formulation and testing of a hypothesis.

From the explanations above, a knowledge that does not have complete data and has not passed the test cannot be called as science. It can be concluded that science and the scientific method have an inviolable correlation, because something can be said as a science if the science or fact reveal the truth, has data that can be tested for truth and validity through standard observations, experiments, and research, testing, and accepted in the society.

Based on the background above, the authors will try to discuss some basic understanding concerning Indonesian immigration Act including the structure of the Act number 6 year 2011 as well as the implementation of the Act by the government of Republic of Indonesia.

METHOD

Approach

The study of this research using normative legal research. A method to describe, explain and analyze also develops the legal construction of state sovereignty from the immigration perspective. The approach is statutory and conceptual method.

Data Analysis Technique

The collection of legal materials carried out through identifies and enacting laws, library conduct (writings and scientific works), and other sources from legal materials related to concern legal issues.

ANALYSIS AND DISCUSSION

Law

Indonesia adheres as a state of law. Therefore, all actions of the Indonesian people bound to legal regulation including the sanctions if the subject of law violates the rule. According

² <https://www.merriam-webster.com/dictionary/science>, accessed on Tuesday (12/10/2021), at 13.25 WIB.

³ *Ibid.*

to R. Abdoel Djamali S.H., in his book with the title of “ *Pengantar Hukum Indonesia* (The Introduction to Indonesian Law)”, stated that law is provision that arise from human life association. ⁴ it also functions to create order in the association of human life, whether in the form of togetherness and social relation, regulations are needed. It will limit and regulates human behavior with the intention that human would not act arbitrarily and to avoid clashes that might be occur in society. Consequently, the author may conclude the law as a system of regulations or provisions which contains norms that arrange the social life including its sanctions or penalties for those who violate them.

Immigration

Presently, world globalization has role and impact in almost all sectors of human life which indirectly changes the way of human life. One of them is how human communicate and access information. Advances in transportation and technology growing rapidly, people once only communicate in certain areas or only communicate within the same country by way of landline telephone, public telephone, and so on. However, with the development in communication technology, most people easily access the information and communications across the countries. As a result, then it derives the society movement to other countries with various specific goals.

Generally, there are two main theories that describes the cause of people to migrate, it is known as Push and Pull Factors theory. Push factors refers to situation where people move voluntarily because of absolute causes such as war, drought, lack of job opportunity etc. While the pull factors motivated by receiving countries utility such as education reasons, new experiences, and facilities.⁵

Indonesia as a state of law has ways and rules in regulating the movement of people who enter and exit the territory of Indonesia. In this case, Indonesia has The Immigration Act number 6 year 2011. Juridically, Article 1 Number (1) of The Immigration Act number 6 year 2011 explains the meaning of Immigration as “Regarding the traffic of people entering or leaving the Indonesian Territory and its supervision in order to maintain the upholding of state sovereignty”.⁶ To understand further regarding the contents and structure of The Immigration Act number 6 year 2011, the author has made a brief explanation of the contents of the law, which here we will refer to as the structure of Indonesia Immigration Act.

The Structure of Indonesian Immigration Act number 6 year 2011

As we discussed earlier, below is brief explanation of the structure of Indonesian Immigration Act number 6 year 2011.

1) Chapter I

Chapter I discusses about the “General Provisions” of immigration, consists of two articles, of which Article 1 consists of 39 points and Article 2 consists of 1 explanation. Article 1 discusses about the definition of Immigration, State Territory, Immigration Function, Minister of Immigration, Director General, Directorate General, Immigration Officer, Civil Servant Investigator (PPNS), Foreigner, Immigration Management Information System, Immigration Office, Immigration Checkpoints, Travel Documents, Immigration Documents, Travel Documents of the Republic of Indonesia, Passports of the Republic of Indonesia, Travel Letters Like Passports, Visas of the Republic of Indonesia, Entry Signs, Exit Signs, Stay

⁴ R. Abdoel Djamali, *Pengantar Hukum Indonesia*, 2nd Ed. (Jakarta: Rajagrafindo Persada, 2016), 2

⁵ Aisyah Wardatul Jannah, The Brain Drain and Human Rights, *Unram Law Review Journal*, Vol 2 : issue 1 : 2018, page 93

⁶ Indonesia. “Undang-Undang No. 6 Tahun 2011 Tentang Keimigrasian.”

Permits, Integration Statements, Permanent Stay Permits, Re-Entry Permits, Corporations, Guarantors, Transport Equipment, Prevention, Deterrence, Immigration Intelligence, Immigration Administration Actions, People Smuggling, Immigration Detention Centers, Immigration Detention Rooms, Detention Centers, Deportees, Persons in Charge of Transport Equipment, Passengers, and Representatives of the Republic of Indonesia. Article 2 explain about that every Indonesian citizen has the right to travel to and from the territory of Indonesia.

2) *Chapter II*

Chapter II discusses about “Implementation of Immigration Functions” which consists of 2 parts. The first part consists of 4 articles and the second part consists of 1 article. This chapter describes the technical implementation of the immigration function. Such as policies, establishment of immigration checkpoints, immigration offices, detention houses, management information systems, and international cooperation in the field of immigration.

3) *Chapter III*

Chapter III discusses about “Entry and Exit Indonesian Territory” which consists of 5 sections and 16 articles. The first part consists of 2 articles which explain in general the affirmation of entry and exit of Indonesian territory. The second part consists of 5 articles that explain about entering the territory of Indonesia. The third part consists of 2 articles that explain about leaving the territory of Indonesia. The fourth part consists of 5 articles that discuss the obligations of the person in charge of the means of transportation. And the fifth part consists of 2 articles that discuss the immigration area.

4) *Chapter IV*

Chapter IV discusses about “Travel Documents of the Republic of Indonesia” which consists of 10 articles that explain the meaning and types of travel documents of the Republic of Indonesia such as passports (ordinary passports, official passports, diplomatic passports), travel documents such as passports, cross-border travel documents or cross-border passes, as well as the duties and authorities of the minister or immigration official on travel documents of the Republic of Indonesia.

5) *Chapter V*

Chapter V discusses about about “Visas, Entry Signs, and Stay Permits” which consists of 3 parts and 32 articles. The first part discusses about the “Visa” which consists of 10 articles. The second part discusses about the “Entry Sign” which consists of 4 articles. The last part, the third part, discusses about the “Stay Permit” which has 18 articles.

6) *Chapter VI*

Chapter VI discusses about “Immigration Control” which consists of 2 parts and 9 articles. The first part, “general”, consists of 8 articles that discuss immigration control, immigration control of Indonesian citizens, supervision of the traffic of foreigners entering or leaving the territory of Indonesia, and immigration control of foreigners’ activities. The second part, which consists of 1 article, describes immigration intelligence.

7) *Chapter VII*

Chapter VII discusses about “Administrative Immigration Actions” which consists of 6 articles. These articles explain the basics of the occurrence of Immigration Administrative Actions (hereinafter referred to as TAK), the forms of TAK, prevention, deterrence, deportation, and burden costs for foreigners or the person in charge of transportation means affected by TAK.

8) *Chapter VIII*

Chapter VIII discusses about “Detention House and Immigration Detention Room which consists of 4 sections and 10 articles. The first part, “general”, which consists of 2 articles discusses about immigration detention houses. The second part which consists of 2 articles discusses about “Implementation of Detention”. The third part, which consists of 1 article, discusses about the “Term of Detention”. The fourth part which consists of 5 articles discusses about “Handling of Victims of Trafficking in Persons and People Smuggling”.

9) *Chapter IX*

Chapter IX discusses about “Prevention and Deterrence” which consists of 2 parts and 14 articles. The first part which consists of 8 articles discusses about “Prevention”. Part 2 which consists of 6 articles discusses about “Deterrence”.

10) *Chapter X*

Chapter X discusses about “Investigation” which consists of 9 Articles. Contains immigration crime investigations, PPNS authority, coordination with police investigators of the Republic of Indonesia, evidence of criminal investigations, cooperation in the investigation and investigation of immigration crimes with domestic and foreign law enforcement agencies.

11) *Chapter XI*

Chapter XI discusses about “Criminal Provisions” which consists of 24 articles. Contains criminal provisions for the person/in charge of transportation means/inn owner/guarantor who violated. This chapter also discusses about the penalties that apply to the violator.

12) *Chapter XII*

Chapter XII discusses about “Cost” which consists of 2 articles. Filled with the costs or funds to implement this Law which is charged to the State Revenue and Expenditure Budget. This chapter also explains about immigration costs such as application fees for travel documents, visas, residence permits, re-entry permits, and so on which are non-tax state revenues in the field of immigration.

13) *Chapter XIII*

Chapter XIII discusses about “Other Provisions” which consists of 2 articles. This chapter contains provisions for people leaving and entering Indonesian territory in border areas with cross-border agreements regulated in the agreement between the government of the Republic of Indonesia and the government of neighboring countries that have the same national border, and also discusses about immigration provisions through bilateral and multilateral agreements.

14) *Chapter XIV*

Chapter XIV discusses about “Transitional Provisions” which consists of 1 article. This chapter discusses about the validity of a visit/limited/permanent stay permit issued under The Immigration Act number 9 year 1992.

15) *Chapter XV*

Chapter XV discusses about the “Closing Provisions” which consists of 4 articles. This chapter contains the enactment of The Immigration Act number 6 year 2011. As well as discussing the revision of The Immigration Act number 9 year 1992 into The Immigration Act number 6 year 2011.

Selective Immigration Policy in The Immigration Act number 6 year 2011

The increasing number of foreign tourists coming to Indonesia causes Indonesian Immigration to have a greater responsibility in maintaining the upholding of the country’s sovereignty. According to the Law of Immigration, The Immigration Act number 6 year 2011, Immigration has an important function and role in regulating The Immigration function is part of state government affairs in providing immigration services, law enforcement, state security, and facilitating community welfare development. Judging from its function, Immigration is an important part in maintaining the integrity of the country.⁷

Many people have migrated internationally with various purposes. With so many people migrating, of course there are laws that regulate it. Indonesia as a state of law has made regulations for Indonesian citizens and foreign nationals who wish to enter and leave the territory of Indonesia through The Immigration Act number 6 year 2011. Many foreigners enter the territory of Indonesia with various purposes such as diplomatic, tourism, business, settling, and so on. Especially with the implementation of a visa-free policy. As an example, cumulatively, in January-February 2016, the number of foreign tourists visiting Indonesia in a broad sense reached 1.70 million visits, an increase of 4.46 percent compared to the number of foreign tourists visiting in the same period the previous year which amounted to 1.63 million visits.⁸ But apart from these goals, are all foreigners allowed to enter the territory of Indonesia? The answer is no.

In order to maintain state sovereignty and state welfare, and Indonesia’s economic development, Indonesian Immigration adopts a Selective Policy system, namely by setting certain requirements that must be met by the foreigner in order to obtain a permit to stay in Indonesia.⁹ So it can be concluded that only foreigners who have met certain requirements and can bring benefits to the Indonesian state can be granted permission to enter Indonesian

⁷ *Ibid.*

⁸ M. Alvi Syahrin, “Eksodus Warga Negara Tiongkok: Antara Kebijakan dan Penyelundupan,” *Majalah Check Point*, Edisi 5, November 2016.

⁹ Inanda Agustina et al., “Politik Hukum Imigrasi Nasional Pasca Terbentuknya Masyarakat Ekonomi ASEAN (MEA)” (Depok, 2017)

territory. In other words, selective policy is a policy that is applied to every foreigner who will enter the territory of Indonesia, where only foreigners who provide benefits and do not endanger security and public order are allowed to enter and stay in the territory of Indonesia. Foreigners who will enter and stay must also have clear goals and objectives while in Indonesian territory.

Based on the Part One Elucidation of The Immigration Act number 6 year 2011, this selective policy requires that:¹⁰

- a. Foreigners who obtain a Stay Permit in the territory of Indonesia must be in accordance with the intent and purpose of being in Indonesia
- b. Only foreigners who provide benefits and do not endanger security and public order are allowed to enter and be in Indonesian territory

CONCLUSION

From the discussions and explanations above, a conclusion can be drawn regarding the meaning of Introduction to Knowledge of Immigration Policy Under The Immigration Act Number 6 Year 2011. Introduction to Knowledge of Immigration Policy Under The Immigration Act Number 6 Year 2011 can be concluded as an introduction to knowledge about The Immigration Act Number 6 Year 2011 as well as the Immigration Policy that Indonesia adopt, namely the Selective Policy

In order to maintain state sovereignty and state welfare, and Indonesia's economic development, Indonesian Immigration adopts Selective Policy system. It can be concluded that only foreigners who have met certain requirements and can bring benefits to the Indonesian state can be granted permission to enter Indonesian territory. Because the function of immigration is to ensure that every foreigner who enters and leaves the territory of Indonesia brings benefits and does not harm Indonesia. Based on this principle, only foreigners who can provide benefits for the welfare of the people, nation and state, do not endanger security and order, and are not hostile to the people who can enter and leave the territory of Indonesia.

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