

Legal Certainty for Foreign Citizens of Criminal Actors in Immigration Area

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Abstract: *With the presence of foreign nationals in Indonesia, it can be found that criminal acts committed by those foreign nationals. In fact, it could be that the intention to commit these violations already existed while still in their country and / or other countries. The purpose of this research is to find out and study the arrangements for foreign citizens (WNA) who commit criminal acts in the immigration area and to find out the arrangements for foreigners who perpetrate a criminal offense in the immigration area. This research is a normative juridical study, using a descriptive analytical approach. The research result are, To tackle transnational crime, a multilateral mechanism has been created through an international treaty which becomes the basic guide for countries in efforts to combat transnational crime. The Indonesian government in providing legal services in the field of immigration to the community has laid good foundations with the passing of the Law on Immigration which is considered capable of answering the aspirations of the community. Legal arrangements for foreigners who commit criminal acts in the immigration area are in accordance with the prevailing laws and regulations in Indonesia and are carried out in accordance with applicable law through the criminal justice system and if proven in court to commit acts that fulfill the elements of a criminal act, then criminal sanctions in accordance with the laws and regulations, it will be imposed on foreigners, including those who may be refused or expelled.*

Keywords: Immigration, Foreign Citizens, Crime

1. Introduction

The increase in the traffic of people and goods between countries has been a concern of countries in the world for a long time because each country has the sovereignty to regulate the traffic of people who will enter and leave the territory of their country and even to visit or to stay temporarily. This resulted in changes in relations between countries and "within" countries. The flow of information, capital and people moves very rapidly across all regional boundaries of the country. No single country can cover all aspects of state administration in one mechanism and control system that stands alone without any cooperation with other countries.¹

The movement of people across the borders of a country is a dynamic global phenomenon. The development of human traffic flows globally will always increase, both in terms of the number, complexity of the problems, as well as the resulting economic, socio-cultural and security impacts. This movement will directly influence the development of immigration duties and functions.

There are so many foreigners who want to visit the country of Indonesia because they remember the location of Indonesia's territory which is very strategic in international life, because it is traversed by international traffic intersections either on land, air or at sea. In addition, other influences on Indonesia's geographical location touch on

culture and the many beautiful, interesting and historic places that can be visited by foreign tourists.²

Coupled with the high state of Indonesia's natural resources, it provides great hope and benefits for the Indonesian people for the welfare of the Indonesian people, it also attracts attention from outsiders to enter and seek an advantage from the high state of Indonesia's natural resources. However, to enter Indonesian territory, citizens of other countries must comply with the rules of national and international law.

In the current era of globalization, the flow of traffic of people is increasing both from within the territory of Indonesia to outside the territory of Indonesia and vice versa, which is done by Indonesian citizens (WNI) or foreign citizens (WNA) for personal or business purposes also brings consequences and problems. can create a strong potential for immigration crimes.

Immigration comes from the Dutch language, *immigratie*, which comes from Latin, namely *immigratio*, with the verb, *immigreen*, which in Latin is called *immigrare* and hereinafter commonly referred to as *immigratie*. In English it is called immigration; which consists of two words, namely in which means deep and migration which means moving, coming, entering or bringing in.³

Immigration Crime is regulated in Law No. 6 of 2011 on Immigration (hereinafter referred to as the Immigration

¹ SyahrilLoetan, 2003, Millenium Development Goals (MDG) dan Program Pembangunan di Indonesia, Jurnal Hukum Internasional Lembaga Kajian Hukum Internasional FH UI, Volume 1 Nomor 1, Oktober, p. 61.

² RuriKemalaDesriani, 2015. "Fungsionalisasi Hukum Pidana Terhadap Pelaku Penyalahgunaan Izin Tinggal." POENALE: Jurnal Bagian Hukum Pidana Vol. 3. No. 4., p. 3

³ SiharSihombing, 2018, *Hukum Migrasi*, Bandung : Nuansa Aulia, p. 2.

Law). The criminal acts regulated in Law No. 6 of 2011 include, among others: Violation and Crime.⁴In article 34 of Law No. 6 of 2011 on Immigration, every foreign citizen visiting Indonesia must have a visa. Visa is a written permit issued by an authorized official at the representative of the Republic of Indonesia. However, the granting of visas is often misused by foreign nationals.

Law No. 6 of 2011 on Immigration in Article 22 paragraph (1) states that each Immigration Checkpoint is assigned a certain area to carry out immigration checks which is called "immigration area". As for the explanation of article 22 paragraph (1) of Law No. 6 of 2011 concerning Immigration, it is explained that what is meant by "immigration area" is an area at the Immigration Checkpoint, which starts from the Immigration check queue on departure to the transportation means or from transportation means to the Immigration check counter on arrival. The establishment of an immigration area is very important in determining the status of a person (in this context, a foreign citizen) whether he is considered to have left or entered Indonesian territory.

A foreign citizen is someone who lives and resides in a certain country but does not come from that country nor is he legally registered as a citizen, who has various purposes both in pursuing education, business, and other interests. Foreign nationals have rights and obligations that must be fulfilled in order to live in a country and are protected by international law.

In fact, it must be acknowledged that an increase in the flow of people, goods and services from and to the territory of Indonesia can promote economic growth and the process of modernization. The increase in the flow of foreigners to the territory of the Republic of Indonesia will certainly increase foreign exchange through investments made and trade activities. Along with the increasing flow of people, goods, services and capital, it can also invite negative influences such as⁵:

- Domination of the national economy by transnational companies joining Indonesian companies.
- Abuse of Immigration Permit.
- The emergence of international crimes or transnational crimes such as trafficking in persons, people smuggling, and narcotics crimes.

This negative impact will further extend to the pattern of life and the national socio-cultural order which can affect aspects of maintaining national security and resilience at a macro level. To minimize the negative impacts arising from the dynamics of human mobility, both Indonesian citizens and foreigners, who leave, enter and live in Indonesian territory, immigration must play an increasingly large role. The stipulation of a selective policy on immigration law makes the Indonesian immigration institution an operational basis in rejecting or allowing foreigners, both in terms of their entry, existence, and activities in Indonesia. Based on

the selective nature of immigration law politics, it is determined that only foreigners:

- provide benefits for the welfare of the people, nation and the Republic of Indonesia;
- does not endanger security and public order; and
- is not hostile to the people, nation and state of the Republic of Indonesia, is allowed to enter and is allowed to reside in the territory of Indonesia and is granted a residence permit in accordance with the intention and purpose of his arrival in Indonesia Thus, the important role of the immigration aspect in the structure of state life will be visible in regulating the entry and exit of people from and into Indonesian territory and granting residence permits and supervision of foreigners while in Indonesian territory⁶.

Various efforts have been made to carry out the supervision and control of foreigners in order to increase national economic development while maintaining a balanced national resilience, with the following activities⁷:

- Realizing the establishment of a network in an information and management system in the field of immigration that can online receive, send, process, store and display data regarding the traffic in and out of each person as well as the activities and presence of foreigners while in Indonesia in an integrated manner.
- Realizing the formation of cooperation in the field of immigration both regionally and internationally (bilateral and multilateral) in order to create harmonization and synchronization of regulations and their implementation in the field.
- Realizing selective opening of entrances for direct flights to and from abroad, by adding additional entrances to the ones already available. The addition is important to anticipate regional economic growth, especially AFTA and considering Indonesia's geographical conditions.
- Realizing the opening of a new immigration office with a thorough and realistic prior assessment so that the role of immigration in the regions can develop. In fact, the function of immigration is not only concentrated on the service function, but also on the function of law enforcement and security functions as well as facilitating economic development that is adapted to regional developments.
- Simplification of immigration procedures for foreign investors who intend to invest in Indonesia needs to be done, among others, in the form of easy granting of permanent residency permits for investors who have met certain conditions. Thus it is hoped that a pleasant investment climate will be created and this will further stimulate other foreign investors to invest in Indonesia.

Thus the role of immigration in the order of state life comes from regulating the entry and exit of people from and into the territory of Indonesia, signing the entry of foreigners at immigration checkpoints and granting immigration residency permits and monitoring foreigners while in Indonesian territory in terms of the presence and activities of

⁴ SiharSihombing, 2013, *HukumKeimigrasianDalamHukum Indonesia*, Bandung: NuansaAulia, p. 2.

⁵ SyahrilLoetan, *Op. Cit.*, p. 61.

⁶ Alinea ke-9 PenjelasanUmumUndang-UndangNomor 6 Tahun 2011 tentangKeimigrasian.

⁷ M. Imam Santoso, 2004. *PerspektifImigrasidalam Pembangunan EkonomidanKetahananNasional*, UI-Press, Jakarta, p. 122.

foreigners. according to the visa or immigration residence permit they use in Indonesia.

It does not rule out that with the presence of foreign nationals in Indonesia, criminal acts committed by foreign nationals can be found. In fact, it could be that the intention to commit the violation already existed while he was still in his country and / or other countries.

Supervision of foreigners is not only carried out when they enter, but also while they are in Indonesian territory, including their activities. Immigration control covers immigration law enforcement, both administrative and immigration crimes. Article 66 paragraph (2) letter b of Law Number 6 Year 2011 concerning Immigration, states that Immigration Control includes controlling the traffic of foreigners entering or leaving Indonesian territory as well as monitoring the presence and activities of foreigners in Indonesian territory.

In fact, although the legal rules and policies regarding the supervision and placement of foreigners have been stipulated, there are still many criminal acts that occur, for example in the form of illegal entry of foreigners which means the entry of foreigners without a valid travel document according to their purpose, criminal acts such as theft, persecution, even murder, as well as criminal acts such as the smuggling of narcotics and other illegal goods.

As an Immigration Officer, the author will convey the author's experience while serving at Ngurah Rai International Airport, Class 1 Immigration Office for TPI Ngurah Rai Bali. Where at that time the writer as Assistant Supervisor Unit A, when carrying out daily duties as an Immigration officer, there was an incident where a flight attendant or an airplane crew experienced sexual harassment after landing and headed to the Immigration area to carry out document clearance to Immigration. The admission from the flight crew when reporting the incident to the immigration officer was that there were foreign nationals who were indicated to have been drunk and committed sexual harassment by holding the body parts of the crew of the transportation means. As a follow-up to the report, the Immigration officer reported to the Ngurah Rai International Airport and Airport Police authorities, after an inspection was carried out the conclusion was that the foreigner had not received an immigration landing stamp, which meant that the foreigner could not be subject to law in Indonesia and finally Immigration decided to return it. return the foreigner to the place of origin of the flight by reason of refusal of "Immigration Reasons".

2. Problem Identification

Based on the problems described in the background above, the formulation of the problem in this legal research is:

- 1) How do International Law and National Law compare in the context of the Immigration area?
- 2) How should the arrangements for foreign criminal offenders in the immigration area?

3. Literature Review

Previous research aims to obtain comparison and reference material. In addition, to avoid the notion of similarities with this study. So in this literature review the researcher lists the results of previous research as follows:

- 1) Muhammad Ammar Dimas Prasetyo; *REFORMULASI KEBIJAKAN KEIMIGRASIAN DALAM MENANGGULANGI MASUKNYA PAHAM TERORISME/ RADIKALISME KE WILAYAH INDONESIA*; The results show that to anticipate terrorism that has an international network, the concept of block (Prevent-Tangkal) is a very open instrument. Terrorism is a form of crime that can be very strong across national borders (transnational crime) and even organized (transnational organized crime). because it creates networks with organized groups located in other countries. Therefore, to anticipate terrorism that has an international network, the concept of block (Prevent-Tangkal) is a very open instrument. Prevention is a temporary prohibition against leaving Indonesia for reasons related to immigration or other reasons determined by law. Meanwhile, prevention is the prohibition of entering Indonesian territory by foreigners for immigration reasons.
- 2) Eddy Pratomo; *Prospek Dan Tantangan Hukum Internasional Di ASEAN Dan Indonesia Pasca Piagam ASEAN Dari Sisi Perjanjian Internasional*; The results of research and discussion show that after the formation of the Asian Charter, the agenda that will be addressed by Asian countries is that its implementation really requires strong political will and an adequate supporting framework. For Indonesia, the prospects and challenges of implementing this charter are largely in the form of reforming conformity law into international organization law. From an international point of view, Indonesia's position as the host of the Asian headquarters can greatly influence the development of international law, particularly the law of international organizations.

4. Research Methods

1) Research Specification

This study uses descriptive analytical research specifications. According to Soerjono Soekanto and Sri Mamudji:⁸

"Describe the situation or event that is being researched and then analyzed based on facts in the form of secondary data obtained from primary and secondary legal materials".

According to Ronny Hanitjo Soemitro:⁹

"Analytical descriptive method is a method that describes Indonesian legislation and applicable international legal provisions that are linked to legal

⁸ Soerjono Soekantodan Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: PT. Raja Grafindo, 2014), p. 12.

⁹ Ronny Hanitjo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta: Ghalia Indonesia, 1990), p. 15.

theories in practice in connection with the problem under study.”

Analytical descriptive research is intended to describe the data that is as accurate as possible about the abuse of visit visas, conditions or other symptoms by limiting the problem so that they are able to carry out the prevailing laws and regulations and can paint facts to get a picture of the abuse of residence permits so that they can draw conclusions, without using statistical formulas or mathematical formulas.

2) Research Approach

This study uses a Juridical-Normative approach. According to Ronny Hanitjo Soemitro, the approach or legal research uses approaches / theories / concepts and analysis methods that are included in dogmatic legal disciplines.¹⁰

Normative legal research is legal research conducted by examining library materials / secondary data only. This research focuses on the science of law and examines the rules of law that apply to law in general, especially on the study of law enforcement regarding the abuse of visit visas in terms of applicable laws (laws and regulations), where legal rules are reviewed according to studies. literature, as well as data collection is done by making an inventory, collecting, researching, and reviewing various library materials (secondary data), both in the form of primary legal materials as well as secondary and tertiary legal materials.

3) Research Stage

The research stage used was carried out in 2 (two) stages, namely library research. Library research is research conducted to obtain theoretical data by studying reading sources that are closely related to the problems in this thesis research. This library research is called secondary data which consists of:

- a) Primary legal materials, according to Anthon F. Susanto, are binding legal materials consisting of laws and regulations relating to the object of research.¹¹ In this paper the authors use the primary legal materials as follows:
 - The Constitution of the Republic of Indonesia Fourth Amendment of 1945.
 - Criminal Procedure Code.
 - Law Number 6 of 2011 concerning Immigration.
- b) Secondary legal materials, according to Soerjono Soekanto, are materials that provide an explanation of primary legal materials, such as draft laws, research results, works from legal circles, and so on.¹²
- c) Tertiary legal materials, according to Soerjono Soekanto, are materials that provide instructions and explanations for primary and secondary legal materials,¹³ seperti: kamus, ensiklopedia”, data dari internet, artikel, surat kabar, dan sebagainya.

¹⁰ *Ibid*, p. 106.

¹¹ Anthon F. Susanto, *Penelitian Hukum Transformatif-partisipatoris: Fondasi Penelitian Kolaboratif dan Aplikasi Campuran (Mix Method) dalam Penelitian Hukum*, (Malang: Penerbit Setera Prees, 2015), p. 163

¹² Soerjono Soekanto, *Op.Cit.*, p. 52

¹³ *Ibid*, p.52

4) Analysis Method

The analysis of the above data used qualitative and argumentative descriptive analysis methods. The description is in the form of a description of the legal materials as they are then followed by an evaluation in the form of an assessment of the legal materials. These legal materials are interpreted by the method of legal interpretation, both grammatical interpretation, systematic interpretation, authentic interpretation, which are then analyzed based on relevant legal theories and doctrines related to the problem.¹⁴

5. Results/ Findings

1) Comparison of International Law and National Law in the Context of Immigration Areas

Transnational crime is a form of crime that poses a serious threat to global security and prosperity considering its nature that involves various countries. To tackle these crimes, a multilateral mechanism was created through an international agreement called the United Nations Convention on Transnational Organized Crime-UNTOC. UNTOC, which was formed in 2000, has become a basic guide for countries in efforts to combat transnational crime. From the Indonesian side, transnational crimes need special attention given the strategic location of Indonesia so that it is vulnerable to various forms of transnational crime.

In an international agreement called the United Nations Convention on Transnational Organized Crime - UNTOC. This is explained in article 2 letter (a) which reads that:

“Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

Whereas in essence, it explains that Transnational Crime or Organized criminal groups are structured groups consisting of three or more persons, which exist for a certain period of time and act together with the aim of committing one or more serious crimes or violations committed in accordance with this Convention, to obtain, directly or indirectly, financial or other material benefits.

In Indonesia, immigration law is a part of the existing legal system, and immigration law is part of a subsystem of State Administrative Law. Immigration law as a subsystem of State Administrative Law in Indonesia has existed since the Dutch colonial rule.¹⁵ The provisions of the immigration law in Indonesia since the Proclamation of Indonesian Independence in 1945 to 1991 have not formally experienced significant development. It was said that because the immigration provisions were still scattered in several statutory provisions and were still strongly influenced by colonial law. In addition to being no longer in accordance with the development of national life, some of these provisions were still provisions formed by the Dutch

¹⁴ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2008), p. 27

¹⁵ M. Imam Santoso, *Op.Cit.*, p. 1

colonial government which were absorbed into the national immigration law, such as ToelatingsbesluitStaatsblad 1916 Number 47 (Penetapan Entrance Permit / PIM), amended and lastly added by Staatsblad 1949 Number 330, as well as ToelatingsordonnantieStaatsblad 1949 Number 33 (Ordinance Entry Permit / OIM), which of course its presence was intended to support the interests of the colonial government. For example, it is stated in the Entry Permit Ordinance that a foreigner who has been granted an entry permit is also granted a residence permit.

The government in providing legal services in the field of immigration to the public has laid good foundations with the passing of Law No.6 of 2011 concerning Immigration which is considered capable of answering the aspirations of the immigration service users. Implementation of Law No.6 of 2011 concerning immigration at the Immigration Office is carried out by immigration officers who are given the authority as referred to in Law No.6 of 2011 of 2011 based on theories and legal principles relevant to their authority. The legal principles in question are important or principal elements, or general bases contained in legal regulations and contain ethical values.¹⁶

In the context of crossing or traveling from or to the territory of Indonesia, for foreigners it will involve immigration from their country, entering Indonesian territory through the Immigration Checkpoint and permits for their existence in Indonesian territory and their activities while in Indonesian territory. For these foreigners, apart from having a travel document from their country, a visa is required to enter Indonesian territory, the person concerned will go through an inspection conducted by the Immigration Officer at the designated place, namely the Immigration Checkpoint and after being allowed to enter will be given permission to be in Indonesian territory.

2) Legal Arrangements for Foreigners Perpetrators of Crime in the Immigration Area

Several law scholars have argued that the purposes of criminal law are:

- a) To frighten people, do not commit crimes, either by scaring the crowd (generalepreventie) or by frightening certain people who have committed crimes, so that in the future they do not commit crimes again (special preventie);
- b) To educate or correct people who like to commit crimes so that they become people of good character, so that they benefit society;
- c) To prevent criminal acts for the sake of protecting the state, society and population, namely:¹⁷
 - To guide the convicted person to convert and become good and useful members of society;
 - To get rid of the stains caused by a criminal act.

Supervision of foreigners needs to be further improved in

¹⁶ M AlviSyahrin, *Reorientasi Fungsi Imigrasi Indonesia : KembalikankeFitrah Penjaga Gerbang Negara*, Jakarta: BhumiPura, 2015, p. 54.

¹⁷ H. Siswanto, S. Politik Hukum Dalam Undang-Undang Narkotika, Cetakan Pertama, Jakarta, PT. Rineka Cipta, 2012, p. 73.

line with the increase in international crimes or transnational crimes, such as trafficking in persons, human smuggling, and narcotics crimes, which are mostly committed by organized international crime syndicates. The perpetrators of these crimes apparently cannot be convicted under the old Immigration Law because Law No. 9 of 1992 does not regulate criminal threats for people who organize international crimes. Those who can be convicted under Law Number 9 of 1992 are those who were organized as victims to enter Indonesian territory illegally

Crime prevention which is part of law enforcement is also an effort to overcome various social problems that arise in society. Efforts to overcome social problems can be done by using several approaches, both legal and social approaches. All approaches used must be oriented towards providing justice in accordance with the ideals of law and ultimately the welfare of the community.¹⁸

The basis for punishment in the Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration in Article 122 states:

Sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah):

- Every foreigner who deliberately misuses or does activities that are inconsistent with the purpose and purpose of the residence permit granted to him;
- Everyone who orders or gives opportunities to strangers to abuse or carry out activities that are not in accordance with the purpose or purpose of granting the residence permit granted to him

It is also regulated in Article 12 that:

The Minister has the authority to prohibit foreigners from being in certain areas in the Indonesian Territory.

International crimes can be defined as acts that are declared by international conventions or customary international law as crimes under international law or crimes against the international community whose prosecution and punishment is based on universal principles. The universal principle here means that every country has the right and obligation to prosecute and punish perpetrators of international crimes wherever they are. This is intended so that no perpetrator of an international crime can escape punishment, however, if an international criminal has been prosecuted and convicted by a court for this crime, the court or other country may not prosecute and punish for violating the principle of *ne bis in idem*.

Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration, also regulates in Article 13 paragraph (1) and (2):

- 1) Immigration Officer refuses foreigners to enter Indonesian territory in the case of foreigners:
 - a) his name is listed in the list of deterrence;

¹⁸ Nuraeny Henny, *Tindak Pidana Perdagangan Orang (Kebijakan Hukum Pidana Dan Pencegahannya)*, Jakarta, Sinar Grafika, , 2011, p.61.

- b) do not have a valid and valid Travel Document;
 - c) have fake Immigration documents;
 - d) do not have a visa, except those who are exempted from the obligation to have a visa;
 - e) has provided incorrect information in obtaining a Visa;
 - f) suffer from an infectious disease that endangers public health;
 - g) involved in international crimes and transnational organized crime;
 - h) included in a list of people seeking arrest from a foreign country;
 - i) involved in treason activities against the Government of the Republic of Indonesia; or
 - j) included in the network of practices or activities of prostitution, human trafficking and people smuggling.
- 2) Foreigners who are refused entry as intended in paragraph (1) are placed under temporary supervision awaiting the process of returning the person concerned.

So, every foreign citizen who enters the territory of Indonesia who has been proven to have committed a criminal act, to him may be refused or expelled, while still being closely monitored by immigration.

6. Conclusion

To tackle transnational crime, a multilateral mechanism has been created through an international agreement which was formed in 2000 to become the basic guide for countries in efforts to combat transnational crime. The government in providing legal services in the field of immigration to the public has laid good foundations with the passing of the Law on Immigration which is considered capable of answering the aspirations of the people who use immigration services.

Legal arrangements for foreigners who carry out criminal offenses in the immigration area are in accordance with the prevailing laws and regulations in Indonesia and are carried out in accordance with applicable legal procedures through the criminal justice system and if foreign nationals are proven in court to commit acts that fulfill the elements of the act. criminal sanctions then criminal sanctions in accordance with statutory regulations will be imposed on foreign nationals including those who may be subject to rejection or expulsion, while still being closely monitored by immigration.

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