



Enforcement Of Criminal Law Against Abuse Of Immigration Permit According To Republic Of Indonesia Law No. 6 Of 2011 Concerning Immigration

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ABSTRACT

various kinds of problems in the immigration sector, one of the cases is the misuse of visas to work by foreign nationals. research objective to analyze immigration law enforcement. The legal research method used is a normative legal approach. The research results in terms of handling this matter are very closely related to the problem of supervision, both tourists entering and leaving the territory of the Unitary State of the Republic of Indonesia, as well as carrying out activities in the territory of the Unitary State of the Republic of Indonesia. Preventive countermeasures are countermeasures carried out in an effort to prevent or guard against the possibility of an immigration crime, in this case the crime of misuse of an immigration permit. Meanwhile, repressive measures can be carried out by way of punishment, deportation or blacklisting. It is better if the provision of this visa-free facility is reviewed and the background for this facility is only for tourism.

Keywords: law enforcement, abuse, immigration

1. Introduction

Law enforcement is the process of making efforts to uphold or function legal norms as a guideline for behavior in traffic or legal relations in the life of society and the state. Viewed from the point of view of the subject, law enforcement can be carried out by a wide range of subjects and can also be interpreted as law enforcement efforts that involve all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable law, means he is carrying out or enforcing the rule of law. So, "law enforcement reform" contains within it "power/authority reform in the field of law enforcement"(Arief, 2001, p. 3)

As a legal subsystem, immigration law in Indonesia has existed since the Dutch colonial administration(Santoso, 2004, p. 1) The provisions of immigration law in Indonesia from the Proclamation of Indonesian Independence in 1945 to 1991 did not formally experience significant development. Apart from being no longer in accordance with the development of national life, some of these provisions were still formed by the Dutch colonial government and were absorbed into national immigration law, such as Toelatingsbesluit Staatsblad 1916 Number 47 (Determination of Entry Permits/PIM), amended and lastly added by Staatsblad 1949 Number 330, as well as Toelatings ordonnantie Staatsblad 1949 Number 33 (Entry Permit Ordinance/OIM), which of course 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 given an entry permit is also given a residence permit(1984, p. 21).

An increase in the flow of foreigners to the territory of the Republic of Indonesia will certainly increase the receipt of money spent in Indonesia,(2004, p. 1) increase investments made, as well as increase trading activities which will increase foreign exchange earnings.(n.d., p. 3) However, an increase in the traffic flow of goods, services, capital, information, and people can also have negative effects, such as:

- a. Domination of the national economy by transnational companies joining Indonesian companies (through Foreign Investment and/or Domestic Investment, purchase of shares, or licensing contracts).

- b. The emergence of Transnational Organized Crimes (TOC), ranging from trafficking in women and children, money laundering, narcotics, illegal drugs, and illegal immigrants, to acts of international terrorism.

one example of a transnational crime case is a narcotics crime. It is hoped that law enforcement can prevent the large number of illicit traffickers in circulation (Sulaiman & Lampatta, 2020). This negative impact will increasingly extend to patterns of life and socio-cultural arrangements that can affect aspects of maintaining national security and resilience at the macro level. In order to minimize the negative impacts arising from human mobility, both Indonesian citizens and foreigners, who leave, enter, and live in Indonesian territory, immigration must have an increasingly large role and must be selective (selective policy) to make Indonesian immigration institutions have a foundation operational in rejecting or permitting foreigners, both in terms of entry, presence, and activities in Indonesia.

Based on the selective politics of immigration law, it is determined that only foreigners who:

- a. Providing benefits for the welfare of the people, nation, and state of the Republic of Indonesia;
- b. Does not endanger security and public order; as well as
- c. Not hostile to the people, nation, and state of the Republic of Indonesia, allowed to enter and are allowed to be in the territory of Indonesia, and given permission to stay in accordance with the intent and purpose of his arrival in Indonesia.

one of the cases, namely at the end of last February, a foreigner from Russia Sergey Zanimonets (28) was arrested and deported to the TPI Denpasar Special Class I Immigration Office. He works without a permit on the Island of the Gods. (Indonesia, 2023) Based on the things that have been described above, it is necessary for the author to discuss further criminal acts in the field of immigration, especially matters relating to the misuse of immigration permits, therefore the author takes the research title "Criminal Law Enforcement Against Misuse of Permits" Immigration According to RI Law No. 6 of 2011 concerning Immigration"

Based on the background of the problem as described above, it is necessary to describe the formulation of the problem, namely how are the factors that cause the crime of misuse of immigration permits and what are the efforts to deal with the crime of abuse of immigration permits?

2. Method Research

The type of research used in this research is normative legal research in which data sources are taken from secondary data, namely data obtained not directly from the first source, but from data that has been documented in legal materials. This Secondary Data is in the form of Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials. The data collection method is a method or method used by researchers to obtain correct and accountable information. The methods used in this study include: various provisions of applicable laws and regulations and can also be conducted by way of interviews with people who are competent in immigration affairs. The entire data obtained from both primary and secondary, then processed and then analyzed qualitatively, then presented in a descriptive manner that explains, describes, and illustrates the problems that are closely related to this research. (Soerjono, 1983, p. 10)

3. Results and Discussion

3.1. Result

The occurrence of immigration crimes is inseparable from the problem of monitoring foreigners. Inadequate supervision of foreigners entering Indonesia can lead to actions that lead to crimes or violations. One of them is the misuse of entry permits to Indonesia, namely tourist visit permits which basically violated the provisions of the immigration law. the legal system that directly influences law enforcement. Lawrence M. Friedman considered that the success or failure of the law was upheld depending on the three components of the legal system. (Prawira, 2019)

The General Explanation section of Law No. 6 of 2011 concerning immigration emphasizes that for foreigners, services and supervision in the field of immigration are carried out with a "selective" principle (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 the people, based on Pancasila and the 1945 Constitution. (Sugiarto, 1987, p. 51)

The immigration control system is a surveillance system for foreigners, the system includes observing and examining all activities starting from the plans and presence of foreigners in Indonesia until they leave Indonesia (the equality of service and security.) This is confirmed by Article 38 paragraph (1), Law no. 9 of 1992, namely:

(1) Supervision of foreigners in Indonesia includes:

- a. Entry and exit of foreigners to and from the territory of Indonesia
- b. The presence and activities of foreigners in the territory of Indonesia.

The supervision of foreigners is regulated in Law No. 9 of 1992, as in Chapter VI concerning the supervision of foreigners and immigration actions. The implementation of supervision of foreigners who are in Indonesian territory is carried out by the Minister of Justice and Human Rights in coordination with related agencies and institutions (Article 41 of Law No. 6 of 2011).

For smoothness and orderliness in supervising foreigners, the government has organized the registration of foreigners who are in Indonesian territory so that data can be collected about foreigners. As mentioned, the Directorate General of Immigration at the Ministry of Justice and Human Rights of the Republic of Indonesia held simultaneous re-registration of foreign nationals throughout the territory of the Republic of Indonesia from 10 August to 31 October 2001. (Prasetya & Barkatullah, 2005, p. 12)

Registration in 2001 was for the first time since Law no. 6 of 2011 applies and will be carried out every five years based on applicable immigration regulations. Article 39 of Law no. 6 of 2011 states that in carrying out the registration of foreigners in Indonesia, they are obliged to:

- a. Provide all necessary information regarding the identity of himself and/or his family, changes in civil status and citizenship, and changes in address,
- b. Showing their Travel Documents or Immigration Documents when needed in the surveillance numbers,
- c. Register if you are in Indonesia for more than ninety days.

Data collection by way of foreigner supervision is carried out for every foreigner who:

- a. Enter or leave the territory of the Republic of Indonesia;
- b. Located in the territory of the Republic of Indonesia;
- c. Carrying out activities in the territory of the Republic of Indonesia.

1. Supervision of foreigners entering or leaving the territory of the Republic of Indonesia

Supervision of foreigners before entering Indonesian territory is related to consulates or Indonesian embassies specifically on immigration to serve and selectively examine each visa application to Indonesia (Marpang, 2005, p. 23), and decide whether it can be granted or not based on consideration of the interests of the Ipoleksosbudhankamnas. Every foreigner who will come or enter Indonesian territory must have a visa which is an entry permit to Indonesia. (1996, p. 11)

Supervision of foreigners before entering Indonesia is carried out by immigration attaches at each Indonesian representative abroad when the foreigner concerned submits an application for a visa. Therefore, on the other hand, every attaché or Indonesian Embassy in every country has an immigration apparatus on duty there. (1982b, p. 34)

Supervision of foreigners when in the territory of the Republic of Indonesia

When foreigners are heading or already at the landing port, airport, or seaport, surveillance is carried out by immigration officers. This supervisory function is the same as supervision when applying for a visa, namely supervision to prevent the entry of assignees who will cause problems after being in Indonesia.

Supervision of foreigners who carry out activities in the territory of the Republic of Indonesia

The supervision referred to here is a follow-up of supervision after foreigners obtain residence permits in Indonesia, both those who land by air or by sea. Supervision of foreigners who have obtained entry permits in Indonesia can be seen from two aspects (1982a, p. 21), namely:

- a. In terms of immigration, namely monitoring whether the foreigner is carrying out activities and whether the length of stay is in accordance with the immigration permit granted to him (Arief & Muladi, 1998, p. 32).
- b. From the point of view of Ipoleksosbudhankamnas, namely overseeing whether the activities carried out by foreigner's cause conflicts that interfere with the interests of national security and resilience or not.

Some preventive efforts in this regard include the following:

1. Registration officials are equipped with knowledge about the confidentiality/special characteristics of passports of other countries and are equipped with ultraviolet light equipment and magnifying glasses as well as with modern technology;
2. Every landing port has examples of signatures from consular officials at representatives of the Republic of Indonesia abroad, who are authorized to sign visas;
3. Research every foreigner or tourist who wants to enter through a brief interview at each immigration checkpoint;
4. Checking data obtained from places where tourists stay, whether hotels, motels, inns, or friends' residences.

According to Soedarto(Arief, 2005, p. 50), what is meant by repressive actions are all actions taken by law enforcement officials after a crime or criminal act has occurred. Relation to the repetition of foreign nationals who misuse immigration permits is carried out after the occurrence or evidence of abuse of immigration permits. This action can be juridical, and can also be administrative.

1. Juridical action

In article 50 of law no. 6 of 2011 stated:

"Foreigners who deliberately misuse or carry out activities that are not in accordance with the immigration permit granted to them shall be subject to imprisonment for a maximum of 5 (five) years or a fine of up to Rp. 25,000,000. - (twenty-five million rupiah)."

So a juridical action is a foreigner who deliberately misuses the intention of granting an immigration permit and must be proven in court by a judge and then subject to criminal sanctions in accordance with the provisions of the applicable laws and regulations.

2. Administrative measures

According to Article 42 of Law No. 6 of 2011 which regulates immigration actions against foreigners in Indonesian territory, namely:

- 1) Immigration actions are carried out against foreigners who are in Indonesian territory who carry out activities that are dangerous and should be suspected of being dangerous to security and public order, or do not respect or comply with the applicable laws and regulations.
- 2) Immigration actions as referred to in paragraph (1) can be in the form of:
 - a. Restriction, change, or cancellation of permission to exist
 - b. Prohibition to be in one or several certain places in the territory of Indonesia
 - c. The obligation to reside in a certain place in the territory of Indonesia
 - d. Expulsion or deportation from Indonesian territory or refusal to enter Indonesian territory.

Thus the abuse of immigration permits can be carried out with 4 (four) alternatives as mentioned above on the grounds that the foreigner concerned does not heed the regulations governing the presence of foreigners in the territory of the Republic of Indonesia. Based on the description above, the repressive measures that can be taken care sentencing, expulsion (deportation), and including foreigners who are involved in the list of prevention and deterrence or black list (black list).(Arief, 2001, p. 40)

a. Punishment

The function of punishment is as a deterrent, in the immigration bill there are changes in terms of threats of criminal sanctions, as well as the criminal act of misusing the immigration permit granted to him, which is regulated in article 110, the immigration bill which reads: "Punished with a maximum sentence of 5 (five) years or a maximum fine of Rp. 25,000,000. - (twenty-five million rupiahs), a foreigner who deliberately misuses or carries out activities contrary to the intent and purpose of granting the residence permit granted to him."

b. Expulsion

Expulsion or deportation is a unilateral action by the government in the form of expelling foreigners from the territory of the Republic of Indonesia because it is dangerous for peace, morality, or general welfare. In addition, foreigners who enter and are in the territory of the Republic of Indonesia can also be expelled. Provisions regarding this deportation can be seen in Article 42 of Law no. 6 of 2011, especially in paragraph (2) point d.

According to Sri Setianingsih that: "Deportation is an expulsion of foreigners outside the territory of Indonesia (outside the territory of a country) on the grounds that the foreigner's territory is not desired by the country concerned." Meanwhile, according to I Wayan Parthiana, that: "The right of a country to expel foreigners who are in their country is known as expulsion or deportation explosion, this expulsion is solely based on the interests of the country itself. So, it has nothing to do with the country of origin or the country from which he originally came."

c. Black list (block list)

Black list is a term used in everyday language to replace a list of people who are not allowed to leave Indonesia and people who are not allowed to enter Indonesian territory. In immigration, this list is called the "prevention and deterrence list". Article 1 numbers 13 and 14 of Law no. 6 of 2011, stated the meaning of: "Prevention is a temporary ban on certain people from leaving Indonesian territory based on certain reasons." while "Deterrence is a temporary ban on certain people from entering Indonesian territory based on certain reasons."

Based on Law no. 6 of 2011, deterring foreigners is carried out because Known or suspected of being involved in the activities of an international crime syndicate, While in their own country or in another country being hostile to the Indonesian government or committing acts that defame the nation and state of Indonesia; Suspected of having committed an act contrary to security and public order, decency, religion and the customs of the Indonesian people; At the request of a country, a foreigner who tries to avoid being threatened and executed in that country for committing a crime which is also punishable under the law in force in Indonesia; Have been expelled or deported from Indonesian territory; and Other reasons related to immigration which are further regulated by government regulations.

3.2. Discussion

This study identifies the issue of the misuse of work visas by foreign nationals in the immigration sector. The research highlights the importance of strict supervision of tourists entering and leaving Indonesia, as well as those engaging in activities within the country. Preventive measures, such as rigorous monitoring and regulations, are necessary to prevent immigration crimes and visa misuse. Additionally, repressive actions, such as punishment, deportation, or blacklisting, should also be applied when needed. The study recommends a review of the visa-free facility to align it solely with tourism purposes. Such an adjustment would enhance immigration supervision and ensure proper visa usage in Indonesia. Further discussion can propose concrete steps to improve immigration law enforcement and prevent visa misuse in the future.

4. Conclusion

The BVKS facility is a visa-free facility that foreigners can abuse for certain purposes, even though the purpose of the BVKS is tourism, social, culture and business. There have been developments in the grace period for granting visa-free facilities for tourism. Where tourists can enjoy tourism in Indonesia within 2 (two) months. However, this 2 (two) month grace period is considered too long or too long, because in Indonesia in general, and in Medan in particular, it is rarely up to 2 (two) months. The length or duration of this period can in fact provide opportunities for foreign tourists to commit violations by sharing motivation, such as being misused for work.

Efforts to prevent or guard against the possibility of an immigration crime, in this case, is the crime of misuse of an immigration permit. Meanwhile, repressive actions can be carried out by way of punishment, deportation, or blacklisting. Currently Law Number 6 of 2011 concerning Immigration has been socialized by the Team from the Directorate General of Immigration, with various criticisms and responses to the Law, the Team should make corrections, and corrections that deserve attention. namely regarding the arrangement of laws and regulations regarding immigration, so that later even though it has been passed into law it does not add to the confusion. It is better if the provision of visa-free facilities is reviewed and returned to the background of providing these facilities, namely only for tourism.

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