

Immigration Law Enforcement against the Misuse of Foreign Nationals Residence Permit Visas

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Abstract

Act No. 6 of 2011 Article 38: Visit Visa is granted to Foreigners who will travel to the Territory of Indonesia in the framework of a visit to government, education, socio-cultural, tourism, business, family, journalistic, or stopover to continue the trip to the country. The research method used is normative juridical. The results showed that supervision of foreigners is carried out according to Article 66 paragraph (2) of Act No. 6 of 2011 on Immigration to supervise the activities of foreigners living in the territory of Indonesia, whether visiting, staying temporarily or settling. After being granted the application, the next supervision is in the form of checking administrative completeness such as passports and visas, each foreigner must provide the necessary information about the identity of themselves and or their family, report in case of changes in civil status (changes involving marriage, divorce, death, the birth of children, moving jobs and quitting work), as well as changes in the address of their existence at the Airport Immigration Checkpoint or other access such as ports. Violations of administrative law such as overstay will be processed also with immigration administrative actions outside the judicial process which is administrative sanctions imposed by immigration officials against foreigners outside the judicial process

Key Words: Enforcement, Immigration Law, Visa Stay Permit, Foreign Citizen.

INTRODUCTION

The Unitary State of the Republic of Indonesia is an archipelago located on the international sea crossing and is connected by two oceans which are the Pacific ocean and the Indonesian ocean and also is flanked by two continents are the Asian continent and the Australian continent. Indonesia with its geographical location in such a way makes it across for shipping and international trade. In terms of improving the economy in the field of tourism, the government in the field of immigration imposed a short-visit visa-free policy (BVKS) in accordance with Presidential Decree No. 15 of 1983 dated March 9, 1983, on tourism development policy initially aimed to encourage tourism growth. This form of policy is an exemption from the obligation to have a visa to travel to Indonesia for countries in ASEAN. Immigration is a stakeholder that is very directly related to tourism, especially foreign tourists because immigration is the traffic of people entering or exiting the territory of

Indonesia and its supervision is also to maintain the establishment of the sovereignty of the Republic of Indonesia in accordance with Law No. 6 of 2011 Article 1. Crossing and supervision are very important to the entry or exit activities of a person as well as the existence and activities of foreigners residing in Indonesia. The activities of foreigners in Indonesia in which one of them is to travel become the main focus of Immigration as a tourism stakeholder in order to carry out its duties issued several policies to support tourism (Jati, et al, 2021).

Immigration comes from the verb "migrate" or the noun "migration" which means "go from one country or place of residence to settle in another". Thus migration is the geographical transfer of people, both individually and in groups from a place or country of origin to another place or country with the aim of settling. Factually it must be recognized that the increased flow of traffic of people, goods, and services to and from Indonesia can encourage economic growth and modernization processes. The increase in the flow of foreign nationals to the Indonesian territory will certainly increase spending interest in Indonesia, increase investment, and increase trade activity that will expand foreign exchange receipts. In line with the increasing traffic flow of goods, services, capital, information and people can also invite negative influences such as (Iftidha, 2020):

1. Dominance of the national economy by transnational corporations joining Indonesian companies;
2. Abuse of immigration residence permission; and
3. The emergence of international crimes or transnational criminal acts such as people trafficking, people smuggling, and narcotics crimes.

This negative impact will further extend to life patterns as well as socio-cultural order that can affect aspects of maintaining national security and resilience macro. In an effort to minimize the negative impacts arising from human mobility, both Indonesian citizens and foreign nationals who exit, enter, and live in the territory of Indonesia, immigration must have a greater role. The important role of immigration in the order of state life will be seen in the arrangement of entry or exit of persons from and into Indonesian territory, the granting of entry marks of foreign nationals at immigration checkpoints, and the granting of immigration residence permits and supervision of foreign nationals while in Indonesian territory in terms of the existence and activities carried out by foreign nationals in accordance with the immigration residence permits they use in Indonesia. Based on the things that have been outlined above, the misuse of immigration residence permits in the category of foreign nationals whose existence in Indonesia is not in accordance with the residence permit used. In-Law No. 6 of 2011 on Immigration Article 1 The Administrative Act of Immigration is an administrative sanction imposed by the Immigration Officer against Foreigners outside the judicial process under Article 78 administrative sanctions are imposed on:

1. Foreigners holders of Residence Permits that have expired and are still in the Territory of Indonesia less than 60 (sixty) days from the deadline of Residence Permit are charged in accordance with the provisions of the laws and regulations.
2. Foreigners who do not pay the expense fee referred to in paragraph (1) are subject to immigration administrative measures such as deportation and deterrence.
3. Foreigners holders of Residence Permits that have expired and are still within the Territory of Indonesia more than 60 (sixty) days from the deadline of Residence Permit are subject to Immigration Administrative Measures in the form of Deportation and Deterrence.

While in the case of foreigners can be subject to pro-Justitia has also been regulated in Law No. 6 of 2011 on Immigration Chapter XI criminal provisions if:

1. Any person who intentionally enters or exits the Territory of Indonesia and does not go through an examination by the Immigration Officer at the Immigration Checkpoint;
2. The Person in charge of conveyance entering or exiting the Territory of Indonesia with the conveyance that does not go through the Immigration Checkpoint or who intentionally lowers or raises passengers and do not go through the examination of immigration officials or landing examiners at the Immigration Checkpoint and do not pay the burden fee;
3. Any Foreigner who does not perform the obligation is to provide all necessary information about the identity and/or family and report any changes in the civil status, nationality, occupation, guarantor, or change of address to the local Immigration Office or show and submit the Travel Document or Residence Permit in his/her possessed if requested by the Immigration Officer who serves immigration supervision;
4. The owner or manager of the inn who does not provide information or does not provide data on foreigners staying at home or in his lodgings after being requested by the Immigration Office;
5. Any Guarantor who intentionally provides false or untrue information provides the guarantees he provides;
6. Any Foreigner entering and/or residing in the Territory of Indonesia who does not have a valid and valid Travel Document and Visa or should be suspected that the Travel Document is false or falsified;
7. Any person who commits acts aimed at profit, either directly or indirectly, for himself or for others by bringing a person or group of persons, either in an organized or disorganized manner, or ordering others to bring a person or group of people, either in an organized or disorganized manner, who do not have the right to lawfully enter the Territory of Indonesia or exit the Territory of Indonesia and/or entering the territory of another country, for which the person does not have the right to enter the territory lawfully, either by using valid documents or false documents or without the use of Travel documents, whether through immigration checks or not, convicted of people smuggling or people smuggling;
8. Any person who knowingly falsely or falsifies a Visa or Entry Mark or Residence Permit with the intent to be used for himself or others to enter or exit or reside in the Territory of Indonesia;
9. Any person who authorizes or provides opportunities to a Foreigner to abuse or carry out activities that are not in accordance with the purpose or purpose of granting a Residence Permits granted to him; and
10. Any person who knowingly conceals or protects or provides a livelihood or provides employment to a known or suspected Foreigner residing in the Territory of Indonesia unlawfully.

Based on the above description, the issue can be withdrawn, which is the regulation of immigration law against the misuse of foreign national residence permit visas, and regarding

the enforcement of immigration laws against the misuse of foreign nationals' residence permit visas.

RESEARCH METHOD

In this research, the authors choose to use normative legal research methods using substantial views (Qamar, Nuru, Muhammad Syarif, Dachran S. Busthami, 2017). In accordance with the type of research, the primary legal material in this study is legislation related to the enforcement of immigration laws against the misuse of residence permit visas. As secondary legal material in this study will use books, scientific journals, papers, and also scientific articles that can provide clarity about primary law. While in the use of tertiary legal materials in this study, the author used a black law dictionary to find the term of law related to the discussion.

DISCUSS AND ANALYSIS

Immigration Law Regulations against the Misuse of Foreign Nationals' Residence Permit Visas

The consequences of Indonesia as a state of law, of course, everything must have regulation first. And, regarding the use of residence permits is a legal event that has often occurred in immigration crimes. Residence permits granted to Foreign Nationals to be in the territory of the Country of Indonesia are often misused by the holders of these permits so that there are many cases of abuse of residence permits. A residence permit is a permit granted to foreign nationals to be in the territory of Indonesia. A residence permit is very important because without a residence permit every foreign national cannot be in the territory of Indonesia. A residence permit is granted by the Immigration Officer or Foreign Service Official in accordance with the visa that has been granted and regulated in the Immigration Act (Sihombing, 2013). Based on Article 56 Paragraphs 1 and 2 mentioned that the residence permit granted to foreigners can be transferred, which is a Visit Residence Permit into a Limited Residence Permit and a Limited Stay Permit to a Permanent Residence Permit. In accordance with Article 78 Paragraph 3 of the Immigration Law states that: Foreigners holders of Residence Permits who have expired and are still in the Indonesian Government more than 60 (sixty) days from the deadline of Residence Permit are subject to Immigration Administrative Measures in the form of Deportation and Deterrence.

In-Law No. 6 Tahun 2011 Article 38 reads: Visit Visa is granted to Foreigners who will travel to the Territory of Indonesia in the framework of a visit to government, education, socio-cultural, tourism, business, family, journalistic, or stopover to continue the trip to the country. Article 48 states that:

1. Every foreigner residing in the Territory of Indonesia must have a Residence Permit.
2. Residence Permit is granted to Foreigners in accordance with the visa they have.
3. Residence Permit as referred to in paragraph (1) consists of: Diplomatic residence permit, official residence permit, visit residence permit, limited residence permit, and permanent residence permit.

Foreign nationals can be known as refugees or illegal immigrants when interviewing them to find out the purpose and purpose of their arrival to Indonesia regardless of whether they later include refugees or illegal immigrants then there are some actions that can be taken by immigration officials to refuse to grant entry permits. It has been found that some foreign nationals who entered the territory of Indonesia have residence permits that are not in

accordance with what is done by foreign nationals in Indonesian territory, especially in Banda Aceh. Whereas any Foreign National who intentionally abuses or performs activities that are not in accordance with the purpose and purpose of granting a residence permit granted to him in Act No. 6 of 2011 on Immigration Article 122 letter a clearly states "Convicted with a maximum imprisonment of 5 (five) years and a maximum fine of Rp 500,000,000.00 (five hundred million rupiahs)."

Visit residence permit or commonly abbreviated as ITK is given to foreigners to live and be in Indonesia for a short period of time. Visitation Residence Permit can be granted to the newborn child on the condition that the father and mother holders of the Visiting Residence Permit. The entry into force of the Residence Permit accompanied by the holder of the Visit Visa is given a maximum of 60 (sixty) days from the date of entry. As for foreigners holders of Visit visas on arrival and foreigners who are exempt from the obligation to have a visa given a maximum of 30 (thirty) days from the granting of the entry mark (Article 50 of Act No. 6 of 2011). Limited Stay Permit or commonly abbreviated as ITAS is given to foreigners living in the territory of Indonesia for a limited period of time, which is holders of Limited Residence Permit Visas or foreigners granted status from a Visiting Residence Permit, children born in Indonesia when their father and / mother are holders of Limited Residence Permits, foreigners who legally marry Indonesian citizens. The validity period of the Limited Stay Permit is given a maximum of 2 (two) years and can be extended. As holders of a Limited Stay Visa on arrival are only given a maximum of 30 (thirty) days and cannot be renewed (Article 52 of Act No. 6 of 2011). Permanent Residence Permit or commonly abbreviated as ITAP is given to foreigners to live in the territory of Indonesia, namely, foreigners who have been granted immigration permits under the Law, foreigners who have a Limited Residence Permit whose status is transferred to a Permanent Residence Permit. The validity period of the Permanent Residence Permit is given a maximum of 5 (five) years and can be granted an extension for an indefinite period of time with provisions as long as the Residence Permit is not canceled and must report every 5 (five) years (Articles 54 and 59 of Act No. 6 of 2011) (Khalis et al, 2020).

In the world of immigration is also known guarantor of foreign nationals. Guarantor is a person or Corporation responsible for the existence and activities of foreign nationals while in the Territory of Indonesia (Article 1 number 26 of Act No.6 of 2011). While the corporation is a person and/or wealth that is organized, either a legal entity or not a legal entity (Article 1 number 25 of Act No.6 of 2011). There are 3 (three) legal subjects that can be guarantors / sponsors for foreign nationals, the first is the husband or wife of foreign nationals who will come to Indonesia. In this case, there has been a mixed marriage between foreign nationals and Indonesian citizens. Second, every Indonesian citizen can also be a guarantor / sponsor but only applies to residence permits with the use of visa on arrival and repatriation visa. Repatriation is a foreigner ex-Indonesian citizen who wants to live in Indonesia. Third, the company can be a guarantor / sponsor for foreign workers but the company must have capital to be paid and placed with a certain minimum to be able to become a guarantor / sponsor. In addition, a person / company that is a guarantor / sponsor has several responsibilities that must be done. These responsibilities under Article 63 of Act No. 6 of 2011, among others, must be responsible for the existence and conduct of foreign nationals while in Indonesia, must report any changes in the status or transfer of addresses of foreign nationals, then guarantors / sponsors must pay the costs incurred from the repatriation or return of foreign nationals if their residence permit is exhausted or subject to immigration actions i.e.

deportation. Judging from the responsibilities held by the guarantor / sponsor, it takes honesty from the guarantor / sponsor when reporting about foreign nationals that are guaranteed. Not infrequently some guarantors / sponsors give reports that do not match the actual, one example is a company that does not report the actual number of foreign nationals working in the company. In addition, there are also some foreign nationals who do not have a guarantor so that there can be no deportation or repatriation to their home countries (Khalis et al, 2020).

Immigration Law Enforcement Against The Misuse of Foreign Nationals' Residence Permit Visas

Act No. 6 of 2011 on Immigration, immigration is referred to the vanguard in order to maintain the establishment of sovereignty, as an organizer of supervision regarding the traffic of people in and out of Indonesian territory. Supervision is a series of efforts aimed at maintaining a work process to be able to run in accordance with the set plan. Supervision is important for the implementation of a job to avoid irregularities both before and after the implementation of the work. On the misuse of visiting residence visas that have full authority to conduct supervision, namely the Minister of Law and Human Rights who also delegates to the Central Immigration, province, district or city. Immigration law is a set of instructions that regulate the order of people who pass within the territory of Indonesia and supervision of foreigners, in this case, the target of immigration supervision is foreigners entering or exiting Indonesian jurisdiction, it is mandatory to provide information on arrival or departure in the form of identity, immigration permit documents in the form of visas that will administratively be carried out legal checks. The imposition of visa-free acts causes acts of violations such as the smuggling of illegal foreign labor and even the smuggling of human trafficking crimes into Indonesia using only a visit visa. The provision of refusal of the arrival of foreigners applies to foreign holders of visa-free visits important to improve security so that the law in one country needs to focus its rules on everyone who enters the country. Regarding the refusal to apply to foreigners who commit violations, such violations vary from administrative violations of delays in reporting mandatory, reporting of existence that has passed the validity period which has been set by the immigration office since the presence of foreigners entering (overstay), misuse of immigration residence permits, visit visa permits, and unable to show passports when officers conduct checks. The negative impact of the visa-free policy is the ease of space to move in and out of foreigners, it can be misused by the use of foreigners who are not responsible for the presence of adventuring to evacuate (Muhlisa and Roisah, 2020).

Some cases of violations towards foreign nationals that occur in Indonesia should certainly be of more concern for now. Immigration control systems and visa-free travel arrangements need to be re-addressed, as they will have an impact on national welfare and security. Therefore, there needs to be firmness in the enforcement of immigration law for foreigners who do not obey the rules of its existence in Indonesia in order to realize the sovereignty and dignity of the nation (Arifin, 2018). Immigration institutions as public welfare facilities and guardians of state sovereignty are perceived to be weak with the application of visa-free because it is not in accordance with the policies contained in selective immigration policies. Violations that are often committed by foreign nationals visiting Indonesia are overstays even though foreign nationals visiting Indonesian territory have a permit that is not separated from the limit/period of existence that has been determined which

is 60 (sixty) days from the granting of the entry permit, which often occurs is foreigners exceeding the specified deadline. Law enforcement at the Immigration Office is carried out in the form of supervision and administrative measures. Supervision of foreigners is carried out according to Article 66 paragraph (2) of Act No. 6 of 2011 on Immigration to supervise the activities of foreigners living in the territory of Indonesia, whether visiting, staying temporarily or settling. Immigration Supervision includes: the most important supervision is carried out when foreigners apply for visas at the Embassy of the Republic of Indonesia abroad. After the application is granted, the next supervision is in the form of checking administrative completeness such as passports and visas, each foreigner must provide the necessary information about the identity of themselves and or the family, report in case of changes in civil status (changes involving marriage, divorce, death, the birth of children, moving jobs and quitting work), as well as changes in the address of their existence at the Airport Immigration Checkpoint or other access such as ports. Violations of administrative law such as overstay will be processed also with immigration administrative measures outside the judicial process, which is administrative sanctions imposed by immigration officials against foreigners outside the judicial process. Immigration Administrative Measures can be inclusion in the list of prevention of entry (located) in the territory of Indonesia or deterrence; restrictions, changes, or cancellations of residence permits; prohibition to be in one or more certain places in the territory of Indonesia; must be residing in a certain place in the Territory of Indonesia; the cost of expenses; and/or deportation from Indonesian territory (Muhlisa and Roisah, 2020).

The stage of enforcement carried out by Imigras began from administrative supervision and field supervision by conducting investigations and receiving information from the public or government agencies, visiting places suspected of overstaying foreign activities. After finding foreigners who abuse the permit, immigration authorities are authorized to implement immigration administrative measures in accordance with Chapter VII of Act No. 6 of 2011 on Immigration article 75 paragraph (1): Immigration can take administrative action to foreigners who violate public order and are considered not to respect the laws and regulations. The administrative action in question a foreign national who misuses the permit will be included in the list of prevention and prevention of its existence; restrictions, changes or canceled residence permits of its existence; prohibition in one or more places in the territory of Indonesia must be placed in a place such as in quarantine in Rudenim; the cost of expenses; and carried out deportation from the territory of Indonesia. The enforcement of policies to foreigners to avoid the possibility of Indonesia's insecurity by strictly electing foreigners who will enter. This immigration policy is also aimed at realizing public order and national security and denying acts that are contrary to the laws and regulations (Muhlisa and Roisah, 2020).

Here are some efforts to prevent and overcome the misuse of residence permit visas in Indonesia: (Hadi and Syahputra, 2020)

1. Preventive efforts, Supervision of Foreigners is a whole series of activities aimed at controlling whether the entry and absence of foreigners in Indonesia has or is not in accordance with applicable immigration provisions. Supervision of foreigners is included in efforts to prevent the misuse of immigration permits. Because less supervision of

foreigners entering Indonesian territory can lead to actions that lead to crimes or violations, one of which is the misuse of immigration permits. The role of immigration supervision is in control of security either when the permit application is submitted until the permit expires, extended, or even revoked because the foreigner returns to the country of origin.

2. Repressive efforts are carried out after the occurrence of a crime or violation of the law. The actions taken from these repressive efforts are administrative measures. Immigration administrative actions are carried out as non-pro justicia and are also regulated in Law No. 6 of 2011 on Immigration.

CLOSURE

Conclusion

Supervision of foreigners is carried out according to Article 66 paragraph (2) of Act No. 6 of 2011 on Immigration to supervise the activities of foreigners living in the territory of Indonesia, whether visiting, staying temporarily or settling. Immigration Supervision includes: the most important supervision is carried out when foreigners apply for visas at the Embassy of the Republic of Indonesia abroad. After the application is granted, the next supervision is in the form of checking administrative completeness such as passports and visas, each foreigner must provide the necessary information about the identity of themselves and or the family, report in case of changes in civil status (changes involving marriage, divorce, death, the birth of children, moving jobs and quitting work), as well as changes in the address of their existence at the Airport Immigration Checkpoint or other access such as ports. Violations of administrative law such as overstay will be processed also with administrative immigration actions outside the judicial process, namely administrative sanctions imposed by immigration officials against foreigners outside the judicial process

Suggestion

The advice that the author can deliver is that law enforcement in this case immigration authorities, in particular, be able to cooperate with other law enforcement in order to always regulate foreign nationals who are in Indonesia, especially related to the residence permit visa of foreign nationals in Indonesia.

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