

IMMIGRATION LAW ENFORCEMENT AGAINST ABUSE OF VISA RESIDENCE PERMITS FOR FOREIGN CITIZENS***PENEGAKAN HUKUM KEIMIGRASIAN TERHADAP PENYALAHGUNAAN VISA IZIN TINGGAL BAGI WARGA NEGARA ASING*****Dewa Gede Sudika Mangku*, Ni Putu Rai Yuliantini**

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Abstract: this study aimed to analyze law enforcement against foreign nationals who violated immigration rules and supervision carried out by immigration authorities to prevent the misuse of foreign nationals' residence permit visas. The type of research used in this study was empirical juridical. Law enforcement for violations in the field of immigration was in the form of immigration actions divided into two immigration actions in administrative form and immigration actions in the form of litigation or judicial process. Supervision was carried out by immigration authorities to prevent the misuse of foreign nationals' residence permit visas covering two ways: administrative oversight and operational oversight.

Abstrak: kajian ini bertujuan untuk menganalisis penegakan hukum terhadap warga negara asing yang melanggar peraturan keimigrasian dan pengawasan yang dilakukan oleh otoritas imigrasi untuk mencegah penyalahgunaan visa izin tinggal warga negara asing. Jenis penelitian yang digunakan adalah yuridis empiris. Penegakan hukum atas pelanggaran di bidang keimigrasian berupa tindakan keimigrasian yang terbagi menjadi dua yaitu tindakan keimigrasian dalam bentuk administrasi dan tindakan keimigrasian dalam bentuk litigasi atau proses peradilan. Pengawasan yang dilakukan oleh pihak imigrasi untuk mencegah penyalahgunaan visa izin tinggal warga negara asing meliputi dua cara yaitu pengawasan administratif dan pengawasan operasional.

INTRODUCTION

Indonesia is a sovereign state consisting of residents or people which in general can be interpreted as a member of the state. The population (*ingezetenen*) or the people have a special position towards their country is one of the elements to meet the criteria of a country. The population who inhabits a country in terms of law consists of citizens (*staatsburgers*), foreigners who are other than natives in one state territory (*niet-ingezetenen*), people who are not Indonesian citizens not native Indonesians or Indonesians who have renounced their citizenship, and are currently in Indonesian territory are enforced as foreigners (Firmansyah, 2013). Article 26 paragraph (1) Chapter X concerning Citizens

and Residents Constitution of the Republic of Indonesia of 1945 that those who become citizens are the people of the Indonesian nation and the people of other nations who are legalized by law as citizens.

The presence of foreigners in Indonesia has an effect on immigration regulations and policies. Everyone is made easy to travel from one country to another (Abdurrahman, 2009). Various countries in the world are competing to increase economic growth through the tourism sector to increase foreign exchange sources (Hakim, 2015). Advances in technology and human resources are increasingly rapid as well as the development of facilities and infrastructure in the field of transportation and communication

have caused an increasing flow of traffic to the international community.

The government issued a policy and has also been implemented in the form of granting a short visit visa free to foreign nationals which is poured into Presidential Regulation Number 21 of 2016 for 169 countries (Setiawati, 2015). Establishing friendly relations between Indonesia and other countries is one of the ideas for granting a free visit visa based on legitimate reasons and in accordance with applicable regulations (Hakim, 2015). Such as short transit visits to other countries, short excursions, visits due to government duties, socio-cultural activities, or business or to stay due to work matters, the presence of foreigners is legal if through registered channels such as ports, airports or other places designated by the minister of justice.

The arrival of foreigners in Indonesia is very necessary in relation to national development because it can provide benefits and benefits for Indonesia. With the entry and exit of foreigners in Buleleng Regency, this will increase foreign exchange for the state especially increasing regional cash income to support development as well as increasing the amount of foreign currency savings. By looking at what activities are carried out by foreigners while in Indonesia whether it can provide benefits or actually carry out an activity that is not good or commit a crime namely committing abuse of residence permits which is obviously very detrimental to the state and nation (Hasan, 2015). Foreigners who officially and legally have a residence permit in a country are equipped with a separate document explaining their status and indicated in their passport can be stamps, label stickers, electronic data, and so on.

Foreign nationals can be identified as refugees or illegal immigrants when interviewing them to find out the purpose and purpose of their arrival to Indonesia regardless of whether they are refugees or illegal immigrants. There are several actions that can be taken by Immigration Officials to refuse to grant entry (Kurnia, 2011). It has been found that some foreign nationals who enter Indonesian territory have residence permits that are not in accordance with what the foreign nationals do in Indonesian territory.

Based on data from the Singaraja Class II Immigration Office, the occurrence of overstay of residence permits in the Buleleng

Regency area for the past four years is as shows fluctuations in the number of foreign tourists who overstayed their residence permits in Buleleng Regency in the last four years from 2018 to 2021. It can be observed that in 2018 there were 67 foreign tourists who overstayed their residence permits in Buleleng Regency. Then, there was a decrease in 2019 by 30 people and in 2020 by 20 people. However, in 2021 there was an increase with the number of 26 people but not too significant. The fluctuation in the number of foreign tourists who overstay their residence permits in Buleleng Regency is of course influenced by certain factors both from the point of view of legal awareness and in terms of optimizing law enforcement.

Article 122 letter a of Law Number 6 of 2011 clearly states that any foreign citizen who deliberately abuses or carries out activities that are not in accordance with the purpose and purpose of granting a stay permit granted to him can be sentenced to a maximum imprisonment of five years and a maximum fine of IDR500,000,000.00. Although the law stipulates this way in reality there are still foreign nationals who abuse stay permits as happened at the Class II Immigration Office of Buleleng Regency with data obtained from 2017 to 2018 there were three cases of misuse of stay permits and against perpetrators of abuse of stay permits were not criminally processed by the Buleleng Regency Class II Immigration Office, but were only subject to action administration in the form of deportation as stipulated in Article 75 paragraph (2) letter f of Law Number 6 of 2011. Based on the problems described above, this study discussed law enforcement against foreign nationals who violated immigration rules and supervision carried out by immigration authorities to prevent the misuse of foreign nationals' residence permit visas.

METHODS

The type of research used in this study was empirical juridical. Empirical legal studies view the law as a reality that includes social reality, cultural reality, and others (Ali & Heryani, 2012). This study took place in Buleleng Regency, Bali. The study used primary data and secondary data (Sunggono, 2009). Primary data were collected through observation and interviews. Secondary data was collected through literature/document

studies. The sample determination technique used in this study was a nonprobability sampling technique. The way used in determining the subject of the study was the purposive sampling technique for data processing and analysis techniques using qualitative means.

RESULTS AND DISCUSSION

Law Enforcement Against Foreign Nationals Who Violate Immigration Rules

Law as a process is basically the application of discretion and involves decision-making that is not strictly regulated by the rule of law but has an element of personal judgment. Regarding the enforcement of foreign nationals of course it is related to immigration arrangements. According to Law Number 6 of 2011 on immigration that has been established in Indonesia, a permanent residence permit must be issued to foreigners with valid travel documents. Immigration officials may carry out deportation or deportation or deny entry to Indonesian territory if Indonesian citizens do not have valid travel documents and unclear permits.

Article 8 of Law Number 6 of 2011 stipulates that everyone who enters or leaves the territory of Indonesia must have a valid and valid travel document which states everyone who enters or exits the territory of Indonesia must have a valid and valid travel document. All foreign nationals entering Indonesian territory shall have a valid and valid visa unless otherwise provided in this Act and international treaties. In addition to the provisions of Article 8 of Law Number 6 of 2011 the requirements for the entry of foreigners into Indonesian territory are also regulated by Article 3 of Government Regulation Number 31 of 2013 which states that every foreign national entering Indonesian territory must meet the following requirements have a valid visa except those exempt from the obligation to hold a visa, have a valid travel document, and not included in the deterrence list.

The granting of visa-free visit permits makes it easier for foreigners to enter and exit from Indonesian territory so that not a few of the foreigners abuse this opportunity. The problem of misuse of visit permits with their presence in Indonesian territory by foreigners is the easiest opportunity for irresponsible foreigners such as finding a job, settling down, to collect personal benefits (Ismoyo, 2010).

While Indonesia needs to protect the rights of its citizens in getting a job, foreigners need to comply with the provisions and rules to be able to work in Indonesia by the need to register a permit and become a worker who is indeed in a certain field (Sihombing, 2013). This causes the state to be careful in taking policy steps for the benefit of the economy and the stability of state security and not causing a loss of relations between countries.

Immigration as an authorized agency in carrying out immigration inspection duties such as providing approval, entry permits, or denial of entry of foreigners into a country providing arrival restrictions and affirming to foreigners what things are allowed and not (Nugroho, 2016). Misuse of a visit visa is categorized as violating the provisions of Article 38 of Law Number 6 of 2011 concerning Immigration and Presidential Regulation Number 21 of 2016 concerning Free Visit Visas (Pandeiro, 2019). The increase in the number of violators of visitation permits by foreigners coming from visa-exempt subject countries needs to be reconsidered (Naim, Renggong, & Siku, 2021). There needs to be strict enforcement of immigration laws for foreigners who do not obey the rules of their existence in Indonesia to realise the nation's sovereignty and dignity (Muhlisa & Roisah, 2020). The Directorate General of Immigration as the carrying out of the duties of the state gatekeeper for the sake of strong sovereignty and welfare of the state in the visa-free policy of immigration law enforcement is guided by Law Number 6 of 2011 concerning Immigration.

The stay permit is a permit granted to a foreign national to be in the territory of Indonesia. The stay permit is very important because without a residence permit every foreign citizen cannot be in the territory of Indonesia. The residence permit is granted by an Immigration Officer or Foreign Service Officer in accordance with the visa that has been granted that has been regulated in the immigration law (Supramono, 2012). As referred to in Article 78 paragraph (3) of Law Number 6 of 2011 which states that foreign nationals holding a stay permit that has expired and is still within Indonesian territory more than sixty days from the deadline of the stay permit are subject to immigration administrative actions in the form of deportation

and deterrence (Sihombing, 2013). Based on Article 56 paragraph (1) and paragraph (2) of Law Number 6 of 2011 it is stated that the stay permit that has been granted to a foreign national can be converted namely a visit stay permit into a limited stay permit, and a limited stay permit into a permanent stay permit.

Article 38 of Law Number 6 of 2011 which reads a visit visa is granted to a foreign national who will travel to Indonesian territory in the context of a visit to government duties, education, socio-culture, tourism, business, family, journalism, or stopping to continue travel to another country. Article 48 paragraph (1) of Law Number 6 of 2011 states that every foreign national residing in Indonesian territory is required to have a stay permit. Article 48 paragraph (2) of Law Number 6 of 2011 states that the stay permit is granted to a foreign national in accordance with the visa he or she holds. Article 48 paragraph (3) of Law Number 6 of 2011 states that the stay permit as referred to in paragraph (1) consists of diplomatic stay permit, official stay permit, visit stay permit, limited stay permit, and permanent stay permit.

Law enforcement for violations in the field of immigration is in the form of immigration actions which are divided into two that immigration actions in administrative form and immigration actions in the form of litigation or judicial process. Immigration administrative measures that can be imposed on foreigners who carry out dangerous activities that are suspected of endangering security and public order are mentioned in the form of prevention, deterrence, and deportation (Surbakti, Pratama, & Asgar, 2021). In the process of investigating cases in the working area or jurisdiction of the Singaraja Class II Immigration Office PPNS Class II Singaraja Immigration Office which amounts to 3 employees in addition to coordinating with the National Police of the Republic of Indonesia also coordinates with the Resort Police and the City Resort Police which are law enforcement in the regency or city area that is the working area or jurisdiction of the Singaraja Class II Immigration Office in investigating an immigration case involving a foreign national.

In this case, especially in the working area of the Singaraja Class II Immigration Office, there are several violations committed by

foreigners who do not comply with applicable laws. Furthermore, data on foreign nationals who committed visa violations in Buleleng Regency in 2018 to 2021 the Singaraja Class II Immigration Office related to several cases of violations committed by foreigners in the jurisdiction of Buleleng Regency. The Singaraja Class II Immigration Office in 2018 to 2021 has carried out immigration law enforcement in the form of administrative actions and *projustitia* against 208 violations. Out of these 208 violations the Singaraja Class II Immigration Office deported as many as 69 foreigners for violating immigration administration and their existence is indeed undesirable in Indonesia. In addition, 34 people were on the test list and 143 people were on the overstay list. Immigration actions imposed on foreigners who commit violations in the field of immigration the decision regarding the immigration action imposed on foreigners is the authority of the local Immigration Office.

Supervision of Immigration Authorities to Prevent Misuse of Foreign Nationals' Stay Permit Visas

Law Number 6 of 2011 states that immigration is the frontline in order to maintain the establishment of sovereignty as the implementation of supervision related to the traffic of people entering and leaving Indonesian territory. Supervision as one of the functions of management which is a process of activities to ensure and guarantee that goals and objectives and tasks have been implemented properly in accordance with the plans and provisions that have been set (Rahardjo, 2000). In the implementation of supervision it is an important element to maintain the smooth running of the work of the organization consisting of various components, so that it can run according to what is expected.

Immigration supervision based on Article 1 number 2 of Government Regulation Number 4 of 2017 concerning Immigration Supervision Procedures is a series of activities carried out to collect, process, and present immigration data and information of Indonesian citizens and foreigners in order to ensure compliance with the provisions of laws and regulations in the field of Immigration. The definition of supervision in the immigration function is the entire process of activities to control or supervise whether the process of carrying out tasks is in

accordance with predetermined rules (Mirwanto, 2016). In this case, the target of immigration supervision is a foreigner who enters or leaves the jurisdiction of Indonesia then he is required to provide a statement of arrival or departure in the form of personal identity immigration permit documents in the form of a visa which will administratively be checked for validity.

The granting of visa-free visit permits makes it easier for foreigners to enter and exit from Indonesian territory, so that not a few of the foreigners abuse this opportunity. The natural beauty of Indonesia is an attraction for foreign tourists to visit Indonesia, so to continue to increase the number of tourists for economic and tourism reasons (Rahardjo, 2009). Foreigners need to comply with the provisions and rules to be able to work in Indonesia by needing to register a permit and become a worker who is indeed in a certain field (Prayulianda & Antikowati, 2019). This causes the state to be careful in taking policy steps for the benefit of the economy and the stability of state security and not causing losses in relations between countries.

The implementation of visa-free causes violations such as the smuggling of illegal foreign workers and even the smuggling of trafficking crimes into Indonesia using only visit visas. Thus, there is a need for a form of supervision of foreigners who commit violations. These violations vary from administrative violations of delays in reporting mandatory reports of existence that have passed the validity period set by the immigration office since the presence of foreigners entering, misuse of residence permits, visit visa permits, and not being able to show a passport when the officer conducts an examination (Wirasto dkk., 2016). Based on the foregoing, the efforts that immigration continues to make by implementing a pattern of immigration supervision for foreigners include four times including at the time of visa application, entering, or leaving Indonesian territory granting residence permits and carrying out activities in Indonesian territory (Hamidi & Christian, 2015). Immigration supervision is also used in reducing the number of misuses of foreign nationals' residence permit visas in Indonesian territory including in the Buleleng Regency area.

The basis for carrying out services and supervision of foreigners in the field of immigration is a selective policy. Based on the principle of the policy, foreigners who can be granted entry permits to Indonesia are: (a) foreigners who are beneficial to the welfare of the people, nation, and state of the Republic of Indonesia, (b) does not endanger security and order, (c) not hostile to the people or the government of the Republic of Indonesia. Supervision activities for foreigners are carried out to realize the principle of selective policy. Such supervision is not only when foreigners enter and leave Indonesian territory but also if the foreigner is in Indonesian territory including activities while in Indonesian territory.

Supervision of foreigners which includes aspects of their existence and aspects of activities is a process of activities in the field of immigration that collects data and information, analyzes and determines whether the existence of foreigners since entering Indonesian territory and their activities are in accordance with applicable regulations. In the event of a form of deviation or violation of the rules the relevant foreigner will act in accordance with applicable laws and regulations either in the form of judicial actions or immigration actions (Ninage & Diamantina, 2022). Immigration action is an action imposed on foreigners who commit violations in the field of immigration without having to wait for a decision from the judicial process. Immigration action can also be taken after a foreign party has served a sentence based on a court decision.

Immigration supervision system carried out by the Singaraja Class II Immigration Office supported by the foreigners supervision team and the "Siraja Garang" work program or Singaraja Immigration Prevention of violations which was formed together with stakeholders in Buleleng Regency covering two ways namely administrative oversight and operational oversight. Administrative oversight based on Article 67 and Article 68 of Law Number 6 of 2011 namely conducting examinations and research on travel letters, letters or other documents, block lists, shooting, taking fingerprints, and managing immigration data from Indonesian citizens or foreigners. The examination is carried out while granting or refusing to grant immigration permits at imgration checkpoints, immigration

offices, immigration fields at the regional offices of the Ministry of Law and Human Rights as well as representatives of the Republic of Indonesia abroad and the Directorate General of Immigration.

Operational oversight carried out by collecting, processing, and presenting data and information about immigration services for foreigners, traffic of foreigners entering or leaving the territory of Indonesia, a foreign national who has obtained a detention decision, foreigners who are in the process of determining immigration status and/or immigration enforcement, and preparation of a list of names of foreigners subject to prevention and deterrence. Immigration services for foreigners including monitoring data and information related to visas, permits, and immigration status. Administrative supervision for foreign nationals entering Indonesian territory is carried out by checking travel documents, conducting interviews, checking visas, and check the deterrence list. Meanwhile, administrative supervision for foreign nationals leaving Indonesian territory is carried out by checking travel documents, conducting interviews, checking the residence permit, and check the prevention list.

The results of immigration supervision are immigration data that can be determined as confidential data. Such supervision is excluded for foreigners residing in Indonesian territory in the context of diplomatic duties. Based on Article 69 to Article 74 of Law Number 6 of 2011, operational supervision is carried out by carrying out routine activities and operations in the field by conducting a series of monitoring or investigations by interviews, observations and depictions, reconnaissance, wiretapping, shooting, redirecting, tracing, infiltration, use of information and other activities.

All these activities are to obtain information materials or information needed in decision making to formulate and establish immigration policies. Especially in terms of supervising everyone both Indonesian citizens and foreigners entering and leaving Indonesian territory. Supervising the existence and activities of foreigners who violate or do not violate applicable laws and regulations, is dangerous to security and public order, hostility towards the people and the Unitary State of the Republic of Indonesia, for the smooth and successful investigation, security measures and fundraising are carried out.

CONCLUSION

Law enforcement for violations in the field of immigration is in the form of immigration actions which are divided into two that immigration actions in administrative form and immigration actions in the form of litigation or judicial process. Immigration administrative measures that can be imposed on foreigners who carry out dangerous activities that are suspected of endangering security and public order are mentioned in the form of prevention, deterrence, and deportation. Supervision carried out by immigration authorities to prevent the misuse of foreign nationals' residence permit visas covering two ways namely administrative oversight and operational oversight. Administrative oversight namely conducting examinations and research on travel letters, letters or other documents, block lists, shooting, taking fingerprints, and managing immigration data from Indonesian citizens or foreigners. Operational oversight carried out by collecting, processing, and presenting data and information about immigration services for foreigners

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