



# LEGAL ANALYSIS OF LEGAL TREATMENT OF DETAINEES WHO HAVE VIOLATED PUBLIC ORDER (CASE STUDY: MEDAN IMMIGRANT PRISON)

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Article Info	Abstract
<b>Article History</b> Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01	This research aims to find out: 1) the differences between Deteni and Rudenim and 2) how Implementation detainees are treated who violate public order. The type of approach used is qualitative research. This means research that describes, explains, analyzes and develops the legal construction of state sovereignty from an immigration perspective.
<b>Keywords:</b> <i>Legal Treatment, Detention, Violating public order</i>	The results of the research discussion are: 1) Detainees based on Law Number 6 of 2011 concerning Immigration Article 1 paragraph 35 are foreign residents of Immigration Detention Centers who have received a detention decision from Immigration officials. Foreigners in this case are people who are not Indonesian citizens. Meanwhile, the Immigration Detention Center is a Technical Implementation Unit that carries out immigration functions as a temporary shelter for foreigners who are subject to Immigration Administrative Action. 2) Legal treatment for detainees who violate public order will depend greatly on the type of violation committed, its severity, and the regulations in force at the immigration detention center.

## I. INTRODUCTION

Immigration is the movement of people entering or leaving the territory of Indonesia and its supervision in order to maintain the sovereignty of the state. Immigration in this case carries out its duties and functions in providing immigration services, law enforcement, state security, and facilitators of community welfare development.

Foreigners in Indonesia have certain purposes for living in the territory of Indonesia. Immigration as the gatekeeper of the country in carrying out immigration functions, often finds immigration violations committed by both foreign citizens and Indonesian citizens. The violations are entering or leaving the territory of Indonesia without going through the Immigration Checkpoint, foreigners entering or being in the territory of Indonesia without having valid and valid visa travel documents, foreigners using fake travel documents, making or falsifying visas, carrying out activities that are not in accordance with the residence permit, providing incorrect data, and changing or removing information or stamps on travel documents.

Immigration action against foreigners who commit immigration violations begins with the arrest of the foreigner who committed the violation by immigration officers, then taken to

the immigration office and placed in the Immigration Detention Room.

Immigration detention centers or abbreviated as Rudenim in Article 1 paragraph 33 of Law Number 6 of 2011 concerning Immigration are Technical Implementation Units that carry out immigration functions as temporary shelters for foreigners who are subject to administrative immigration actions.

Article 1 paragraph 35 of Law Number 6 of 2011 explains that detainees are foreigners who live in Immigration Detention Centers or immigration retention rooms who have received a detention decision from immigration officials. Article 85 of Law Number 6 of 2011 explains the detention period of detainees in immigration detention centers. Detainees in Rudenim according to Article 85 of Law Number 6 of 2011 concerning Immigration have a maximum time limit of 10 years in immigration detention centers. Based on the background description above, the formulation of the problem to be resolved is Regarding the Implementation of Legal Treatment for Detainees Who Violate Public Order in Rudenim

## II. RESEARCH METHODS

The type of approach used is qualitative research. This means that it is research that

describes, explains, analyzes, and develops the construction of state sovereignty law in the perspective of immigration. The collection of legal materials is carried out by identifying laws and regulations, examining library materials (writings and scientific works), and other sources of legal materials that are related to the legal issues in this study. Then the analysis technique in this study uses mixed logic. This means (legal) reasoning which is a combination of inductive and deductive thinking patterns in concrete factual legal issues.

The process that occurs in this logic is abstraction, legal values, legal principles, legal concepts, and legal norms that are formulated generally in positive legal rules, then concretized or explained and applied to obtain a resolution to the issues being discussed.

### III. RESULTS AND DISCUSSION

#### A. Overview of Detention

The definition of a Detainee based on Law Number 6 of 2011 concerning Immigration Article 1 paragraph 35 is a foreigner who is a resident of the Immigration Detention Center who has received a detention decision from an Immigration official. A foreigner in this case is a person who is not an Indonesian citizen.

Detention according to the Great Dictionary of the Indonesian Language is detention or captivity. Detention can also be interpreted as a process where someone is placed in an immigration detention house to carry out further examination processes in order to be able to deport a Detainee.

The definition of a stateless person (Stateless in Convention relating to the Status of Stateless Persons) explains that a stateless person is someone who is not considered a citizen by any country under the operation of its laws.

#### B. Pendency Period

The detention period is the time limit determined for a Detainee to serve his/her detention period in the Immigration Detention Room or in a Detention House as determined by Law.

According to Article 85 of Law Number 6 of 2011, the detention period for detainees at Rudenim is as follows:

- a. Detention of foreigners is carried out until the detainee is deported;
- b. In the event that deportation as intended in paragraph (1) cannot be implemented,

detention may be carried out for a maximum period of 10 years;

- c. The Minister or appointed Immigration Officer may release the Detainee from the Immigration Detention Center if the time period as referred to in paragraph (2) has been exceeded and grant permission to the Detainee to be outside the Immigration Detention Center by stipulating the obligation to report periodically;
- d. The Minister or appointed Immigration Officer shall supervise and ensure that the Detainees referred to in paragraph (3) are deported.

#### C. Immigration Detention Center (Rudenim)

Immigration Detention Center is a Technical Implementation Unit that carries out immigration functions as a temporary shelter for foreigners subject to Immigration Administrative Actions. Meanwhile, the Immigration Detention Room is a temporary shelter for foreigners subject to Immigration Administrative Actions located in the Directorate General of Immigration and the Immigration Office.

The main tasks of Rudenim in general as regulated in the Letter of the Minister of Justice and Human Rights Number: M.01.PR.07.04 of 2004 concerning the Organization and Work Procedures of Rudenim, namely carrying out the main tasks of the Department of Justice and Human Rights in the field of foreigner detention. To carry out this function, Rudenim has the function of carrying out the tasks of action, isolation and repatriation and expulsion/deportation.

In carrying out their duties, the Head of Rudenim, Head of Sub-Section, Head of Section, Head of Sub-Section, Head of Affairs, are required to apply the principles of coordination, integration and synchronization in the Rudenim environment and other agencies in accordance with their respective main tasks and functions.

In daily practice, other provisions under the Ministerial Decree above must also be followed, such as the Regulation of the Director General of Immigration Number: F1002.PR.02.10 of 2006 concerning Procedures for Detention of Foreigners. This regulation states that the detention of foreigners is the authority of the Head of Rudenim according to the immigration action decision letter issued by the Head of the

Immigration Office, Head of the Immigration Division, or the Director General of Immigration.

For new Detainees entering Rudenim, inspection and searches are carried out, including their belongings in a polite, orderly and careful manner. Personal belongings are then recorded and stored by officers, and dangerous goods are secured.

Before the registration process is carried out, first you are asked for health data that you may have, or you are asked about your health status. This is to prevent the possibility of spreading infectious or dangerous diseases. After your health is deemed adequate, the registration process is carried out. After being registered, the Detainee is then given a Detainee Card. This Detainee Card functions as a control card that contains your full name, gender, place and date of birth, nationality, number, place and date of issue of travel documents, date of entry, sending agency, and article of violation.

If a Detainee dies, the Head of the Immigration Detention Center will immediately notify the local police officers so that they can receive proper treatment, request a death certificate from the doctor who performed the visum et repertum and/or autopsy, report to the Head of the Immigration Division in charge of the Immigration Detention Center, and notify the family, sponsor, or head of the Detainee's country representative.

If the requirements have been met, the detainee will be deported or repatriated. Deportation/expulsion is for detainees who while in Indonesian territory commit crimes or serious immigration violations. However, the obstacle is the rejection from the detainee. This rejection is caused by the reason of having a family in Indonesia, insisting on only being willing to be deported to a certain country of destination, and so on. There are some detainees who cannot be deported because no country wants to recognize their citizenship, so they become stateless, and become permanent detainees.

#### **D. Public Order**

Public order has a broad meaning and can be considered to contain ambiguous meaning. In practice, various interpretations have arisen regarding the meaning and significance of public order, including the Narrow Interpretation, namely that what is meant by violators/contradicting public order is limited to violations of the provisions of laws and regulations only, therefore, an arbitration

decision that is contrary to/violates public order is a decision that violates/contradicts the provisions of Indonesian laws and regulations.

Meanwhile, a broad interpretation is a broad interpretation that does not limit the scope and meaning of public order to positive legal provisions alone, but includes all legal values and principles that live and grow in the consciousness of society, including the values of propriety and the principle of general justice.

Public order is seen as one of the most important but also the darkest issues. Kollewijn argues that we can a priori determine what constitutes public order. CFG Sunaryati Hartono emphasized that no one can find the criteria for public order, either from experts or from theory, but only judges (in certain cases) can determine what can be contrary to the public interest or public order. This is due to factors of time, place, state philosophy adopted by the community concerned, economic systems, culture and political factors that differ from one country to another, and it is even possible that other factors will emerge.

There are three conceptions of public order present in the HPI atmosphere, namely the French-Italian conception, the German conception, and the Anglo-Saxon conception. According to the French-Italian conception, public order applies to foreign legal rules that conflict with national law. In this case, public order is used as a sword (merely as a sword). According to the German conception, public order (Vorbehalt Klausel) is used when foreign law really conflicts with national law. In this case, public order is used as sparingly as possible, namely only as an emergency brake or used only as a shield (merely as a shield). Meanwhile, in the Anglo-Saxon conception, public order (public policy) emphasizes the political aspect and is known as the act of state doctrine.

Immigration has four functions in Immigration Law Number 6 of 2011 concerning Immigration, namely as part of the state government's affairs in providing immigration, security, state enforcement, legal services, and facilitator of community welfare development (Law Number 6 of 2011).

Looking at the selective policy which is the basic rule regarding whether or not foreigners are allowed to enter the Territory of Indonesia, only people who are useful to the Indonesian nation and state and who are not dangerous are allowed to enter and remain in the Territory of Indonesia, in addition to that, foreigners who obtain a

residence permit in Indonesia must comply with their purpose in Indonesia.

Foreigners detained at the Medan Immigration Detention Center are foreigners who have entered and are in Indonesia. These foreigners are allowed to enter and be in Indonesia if they meet the criteria as previously mentioned.

Detainees in Rudenim are foreigners in the territory of Indonesia who are subject to administrative immigration action due to carrying out dangerous activities and are suspected of endangering public security and order or not respecting or not obeying laws and regulations.

Detainees in Rudenim consist of foreigners who disturb public order, violate laws and regulations and violate immigration regulations. However, after the foreigner has been detained, there is no difference in legal treatment of detainees for various cases experienced by each detainee, both in terms of service, facilities and differences in detention rooms. Because detainees in Rudenim are more focused on being deported and repatriated according to the function of Rudenim, namely the function of action, isolation function, deportation and repatriation function. Placement of detainee rooms, food services and health of detainees in Rudenim are carried out by considering gender, age and health conditions.

When viewed from the budget usage side, Medan Immigration Detention Center has participated in the economic growth of the surrounding area by using the budget carefully and prioritizing sectoral goods and services providers or UMKM in the surrounding area. However, this is the role of Medan Immigration Detention Center as a government office and not as an executor of immigration functions.

There are things that need to be changed in the Medan Immigration Detention Center in accommodating detainees while waiting for repatriation or deportation. The detainees or foreigners who are inside are people who have met the criteria to be allowed to enter and be in Indonesia and bring benefits to the nation and state. This view is applied to existing detainees by exploring their expertise.

Public order violations by detainees refer to actions or behaviors of a person who is being detained or in the process of being detained that violate social norms and regulations in force in the detention center. These actions can disrupt security and order in the detention center.

Violations of public order in Medan City by detainees can vary, but in general can be categorized as follows:

1. Physical violence: Hitting, kicking, or committing other acts of violence against officers, other detainees, or agency property.
2. Threat: Saying harsh words, threatening the life or safety of others, or making acts of intimidation.
3. Unrest: Organizing or participating in mass riots in detention facilities.
4. Escape: Making an attempt to escape from the place of detention.
5. Violation of rules: Violating the rules in force in the detention facility, such as not following the activity schedule, damaging facilities, or committing other disciplinary acts.

Some factors that can trigger violations of public order by detainees include:

1. Psychological conditions: Stress, depression, or other mental disorders experienced by the detainee.
2. Criminal background: Long criminal history or involvement in criminal groups.
3. Conditions of detention environment: Overcapacity, lack of facilities, inhumane treatment, or conflict between groups of detainees.
4. Bad influence of other detainees: There is a negative influence from other detainees who have criminal or radical behavior.

Violation of public order by detainees can have serious impacts, both for the detainees themselves and for the Rudenim and the community in general. Some of the impacts that may occur include:

1. Increasing levels of violence: Acts of violence can trigger a cycle of violence that is difficult to stop.
2. Material losses: Damage to detention facility and property can result in significant material losses.
3. Disturbance of security and order: Violations of public order can threaten security and order within the detention center and even in the surrounding environment.

The implementation of legal treatment for detainees who violate public order will depend greatly on the type of violation committed, its



severity, and the regulations in force at the detention center.

#### 1. Internal Disciplinary Action

The form of internal disciplinary action is by giving verbal warnings and written warnings in the form of disciplinary punishment in the form of isolation and in the form of revocation of certain rights for a specified period of time.

#### 2. Criminal act

If the violation committed is a criminal act, the detainee can be brought to court to be tried and given additional criminal penalties. For example, if a detainee commits assault on an officer or another detainee, he can be charged with the assault article in the Criminal Code. Basically, the crime of ordinary assault resulting in serious injury and death is regulated in Article 351 of the Criminal Code and Article 466 of Law 1/2023 concerning the Criminal Code.

### IV. CONCLUSIONS AND RECOMMENDATIONS

Detainees based on Law Number 6 of 2011 concerning Immigration Article 1 paragraph 35 are foreigners who are residents of the Immigration Detention Center who have received a detention decision from an Immigration official. Foreigners in this case are people who are not Indonesian citizens. While the Immigration Detention Center is a Technical Implementation Unit that carries out immigration functions as a temporary shelter for foreigners who are subject to Immigration Administrative Actions.

Public order is a condition in which society lives in a safe, peaceful, and orderly manner in accordance with the prevailing norms and rules. This means that all activities carried out by individuals or groups of people do not interfere with the rights of others, do not harm the public interest, and do not violate the law.

Violations of public order in Medan City by detainees can vary, such as physical violence, threats, riots, escape, abuse, and violations of order. To follow up on these violations, detainees can be given actions such as verbal warnings and written warnings in the form of isolation and in the form of revocation of certain rights.

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