



IMMIGRATION SUPERVISION OF FOREIGNERS APPLYING FOR RESIDENCE PERMITS IN INDONESIA

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Article Info	Abstract
Article History Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01 Keywords: Supervision, Immigration, Foreigners, Residence Permit	<i>To regulate the various types of foreign nationals leaving and entering Indonesian territory, government policy in the immigration sector adheres to the principle of selective policy, namely a policy based on selective principles. Based on this principle, only foreigners can provide benefits to the welfare of the people, nation and State of the Republic of Indonesia, who do not endanger security and order and are not hostile to either the people or the Unitary State of the Republic of Indonesia .</i> <i>In this research, researchers use normative legal studies, namely research that focuses on examining the application of rules or norms. The literature study was carried out with the aim of obtaining secondary data, namely through a series of reading, quoting and reviewing legislation related to the problem.</i> <i>The targets of supervision of foreigners in Indonesia are supervision of their whereabouts (immigration) and supervision of the activities of foreigners while they are in Indonesia. The aspect of monitoring the activities of foreigners requires coordinated activities between agencies in terms of implementing supervision. The Minister of Law and Human Rights as the coordinator at the Central (National) Level together with other relevant government bodies or agencies as the implementer of coordinated supervision of foreigners is called the Coordination of Supervision of Foreigners.</i> <i>A residence permit granted by a State to a foreigner is a form of State sovereignty as a legal State which has complete authority to determine and regulate restrictions for foreigners to stay in a State. This permission is not something that a foreigner can do, but is a privilege given by the State to foreigners</i>

I. INTRODUCTION

Public security and order is a dynamic condition of society as a prerequisite for the implementation of the national development process in order to achieve national goals which are marked by guaranteed security, order, and the upholding of law and the establishment of peace that supports the ability to foster, prevent and overcome all forms of violations of the law and other forms of disturbances that can disturb society.

To regulate foreigners of various nationalities who enter and exit Indonesian territory, the government's immigration policy adheres to the principle of selective policy, which is a policy based on the principle of selectiveness. Based on this principle, only foreigners who can provide benefits for the welfare of the people, nation and State of the Republic of Indonesia, who do not endanger security and order and are not hostile, either towards the people or the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution (UUD 1945),

are allowed to enter or exit Indonesian territory, and for that there needs to be regulations and restrictions in the form of permits given to foreigners if they wish to live in Indonesia.

Indonesia has unique areas and many tourist destinations and good Natural Resources making it an attractive country for foreigners to visit. This is proven by the many visits that come to the territory of Indonesia. In its services, immigration also provides residence permit facilities to Foreigners in accordance with applicable regulations. Residence permit information is given to several foreigners who have a place of shelter and settle in various regions of Indonesia according to the visa held by the foreigner. There are various types of residence permits, namely Diplomatic Residence Permit, Official Residence Permit, Visit Residence Permit (ITK), Limited Residence Permit (ITAS), Permanent Residence Permit (ITAP). Each residence permit cannot be given to foreigners carelessly. Foreigners who come must have a specific purpose that certainly benefits the Unitary State of the Republic of

Indonesia. Residence Permits are given to fulfill International commitments in immigration, both for tourism, Investors, Foreign Workers and mutual cooperation in learning and also the growth of globalization.

Misuse of residence permits by foreigners often occurs. This is the basis for the enforcement of immigration law based on the standardization of applicable regulations and legislation. The arrival of foreigners in Indonesia affects immigration regulations and policies. Everyone is facilitated to carry out expeditions, from one country to another. The advancement of technology and Human Resources that continue to grow, and the development of facilities and infrastructure in the fields of transportation and communication have caused an increase in the flow of international citizen traffic.

All aspects of immigration must be based on what has been stipulated in the 1945 Constitution as the basic law for regulating the implementation of immigration tasks operationally. If we examine the basic considerations of Law Number 9 of 1992 concerning immigration, then the regulation and services in the field of immigration are the rights and sovereignty of the Republic of Indonesia as a country of law.

Based on the universal immigration provisions, each country has the authority to allow or prohibit someone from entering or leaving a country. Based on this universal recognition, the existence of immigration regulations is a very important attribute in upholding the legal sovereignty of a country within the territorial territory of the country concerned, and every foreigner entering the territory of a country will be subject to the laws of that country as are the citizens themselves.

With the problem of How are the Legal Regulations Regarding Immigration Supervision for Foreigners Applying for Residence Permits in Indonesia?

II. RESEARCH METHODS

Research can be defined as all activities of searching, investigating and scientific experiments in a particular field to obtain new facts or principles aimed at improving science and technology. Meanwhile, according to Tyrus Hillway (Introduction to Research) that research is a scientific method carried out through careful and complete investigation, of all evidence that can be obtained regarding a particular problem, so that a solution can be obtained for the problem.

The study uses normative research (library). Normative research is a legal literature study. Literature study is conducted with the intention of obtaining secondary data, namely through a series of reading activities, quoting, reviewing legislation related to the problem. In this study, the author uses normative legal studies, namely research that focuses on examining the application of rules or norms in positive law. Normative legal research is also commonly referred to as doctrinal legal research, namely legal research that does not touch or enter the empirical or sociological legal area in collecting data needed in the study.

The data collection tool in this study uses document study or library study, which means searching for data by studying documents or library materials according to the problem being studied. In general, research distinguishes between primary data and secondary data. Primary data is data collected and processed by the researcher directly from the subject or object of research, while secondary data is data obtained not directly from the object or subject of research.

III. RESULTS AND DISCUSSION

A. Theoretical Study

The theory of legal certainty is one of the objectives of law and it can be said that legal certainty is part of an effort to realize justice. Legal certainty itself has a real form, namely the implementation or enforcement of the law against an action that does not see who the individual is doing. Through legal certainty, everyone is able to estimate what they will experience if they do a certain legal action. Legal certainty is also needed to realize the principles of equality before the law without discrimination. From the word certainty, it has a meaning that is close to the principle of truth. This means that the word certainty in legal certainty is something that can be strictly syllogized in a formal legal way.

Based on Jan M. Otto's opinion, he also explained that the legal rules that are able to create legal certainty are laws that are born through and can reflect the culture that exists in society. The theory of legal certainty put forward by Jan M. Otto can be called real legal certainty or realistic legal certainty, meaning that legal certainty can require that there is harmony between the state and the people who have an orientation and understand the legal system of the country.

With legal certainty, it will guarantee that someone can act in accordance with the provisions of the applicable law and vice versa. Without legal certainty, an individual is at risk of committing acts that are detrimental to society. In line with this goal, Gustav Radbruch also explained that legal certainty is one of the goals of the law itself.

B. Discussion and Research Results

The improvement of the system to be more optimal and precise in order to analyze negative complaints, needs to be done by forming a grand design of the management information system, immigration information. The policies that have been taken, as formulated in the five immigration programs at the 2002 working meeting which gave rise to various implications for the implementation of immigration functions, duties and authorities concerning the fields of legislation, institutions, administration, human resources and the fields of facilities and infrastructure.

To realize a clean justice system, it must start from the judges, as a subsystem of the Integrated Criminal Justice System, and then other law enforcers must have a good mental attitude, morals, substantial professional abilities and a high commitment to law enforcement in accordance with the demands of society and the demands of the Reform Era, and in addition, continuous supervision of law enforcement officers is needed both institutionally and by the community.

There are two things that are the target of supervision of foreigners in Indonesia, namely supervision of their presence (immigrant) and supervision of the activities of foreigners while in Indonesia. The aspect of supervision of foreigners' activities requires coordinated activities between agencies in terms of implementing supervision. The Minister of Law and Human Rights as the Central (National) Level coordinator together with other related government agencies or institutions as the implementers of coordinated supervision of foreigners called the Coordination of Foreigner Supervision.

In Indonesia, there are two types of foreigners who are allowed to stay, Foreign Citizens who have a Residence Permit and foreigners who have the status of "refugee" or foreigners who are in the territory of the Unitary State of the Republic of Indonesia due to a well-founded fear of persecution on the grounds of race, ethnicity,

religion, nationality, membership of a particular social group and different political opinions and do not want protection from their country of origin and/or have obtained asylum seeker status or refugee status from the United Nations through the High Commissioner for Refugees in Indonesia. The Residence Permit regulations for the two types of foreigners are also different. For Foreign Citizens, the residence permit regulations are stipulated in Law No. 6 of 2011 concerning Immigration. Meanwhile, for refugees, it is regulated in Presidential Regulation of the Republic of Indonesia Number 125 of 2016 concerning Handling of Refugees from Abroad.

In Law No. 6 of 2011 concerning Immigration, Article 48 paragraph (1) states that they (Foreign Citizens) must have a residence permit. The residence permits that can be owned by foreigners are Visit Residence Permits (ITK), Limited Residence Permits (ITAS), and Permanent Residence Permits (ITAP). Foreigners who want to have a residence permit in Indonesia have been greatly facilitated by the existence of online residence permit registration. However, there are still foreigners who violate the procedures and provisions that have been set.

In Article 55 of Law No. 6 of 2011 concerning Immigration, it is explained that the granting, extension, and cancellation of Visit Stay Permits, Limited Stay Permits, and Permanent Stay Permits can be carried out by the Minister or a designated Immigration Official.

Article 56 paragraph:

1. The status of a residence permit that has been granted to a foreigner can be transferred
2. Residence permits that can be changed in status are limited residence permits to permanent residence permits.
3. The change of residence permit status as referred to in paragraph (2) is determined by a ministerial decree.

Description of Article 56 paragraph (1) which is interpreted as "change of status" is a change in the status of the existence of Foreign Citizens from a Visit Stay Permit to a Limited Stay Permit and from a Limited Stay Permit to a Permanent Stay Permit. To control Foreign Citizens entering the territory of Indonesia, such as the city of Medan, the government adheres to the principle of selective policy in the field of immigration. According to this principle, only foreigners who can allocate public utilities for the benefit of the people, the state, and the Unitary State of the Republic of Indonesia, do not harm security and

order, and do not cause hostility to the Indonesian nation or the unitary state of Indonesia, based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD) 1945, are allowed to pass through the territory of Indonesia.

For foreigners who do not have valid travel documents, who are found in Indonesian territory, and claim to be asylum seekers, their handling is regulated in Presidential Regulation of the Republic of Indonesia Number 125 of 2016. The handling is carried out based on cooperation between the central government and the United Nations through the High Commissioner for Refugees in Indonesia and/or international organizations. Asylum seekers who have been designated as refugees will then be placed in a Community House or Immigration Detention Center. If their refugee status application is rejected and rejected finally, they will be placed in an Immigration Detention Center for the voluntary repatriation or deportation process in accordance with the provisions of laws and regulations.

Foreigners who wish to reside in Indonesia must comply with regulations and boundaries in the form of granting a residence permit. Basically, supervision of foreigners is the responsibility of the Minister of Law and Human Rights, in this case the Immigration Officer as the implementing operator. The implementation mechanism must be carried out by coordinating with government agencies or institutions whose fields of duty concern foreigners, these agencies or institutions include the Ministry of Foreign Affairs, Ministry of Home Affairs, Ministry of Defense and Security, Ministry of Manpower, Attorney General's Office, State Intelligence Agency and the Indonesian National Police. Coordination of Supervision of Foreigners is carried out in an integrated manner, and SIPORA is formed at the Central level, at the Provincial level and at the regional level.

Law Enforcement is the implementation of law by law enforcement officers by interested parties in accordance with their respective authorities according to applicable legal regulations. While the implementation of immigration law enforcement in accordance with existing legal regulations is in the form of administrative actions and actions through the judicial process (*pro justitia*). While immigration law enforcement officers are determined by law to be Immigration Officers who in this case are also Immigration Civil Servant Investigators (PPNS Immigration).

In the process, immigration law enforcement begins from the starting point of immigration matters which include supervision of the traffic of people entering and leaving the territory of the Republic of Indonesia and supervision of foreigners in the territory of Indonesia. It is stated in Article 18 of the Immigration Law Number 9 of 1992 specifically regarding the supervision of foreigners, there are three things as follows:

1. Entry and exit of foreigners into/from Indonesian territory.
2. The presence of foreigners in the territory of Indonesia.
3. Activities of foreigners in the territory of Indonesia.

In order to supervise foreigners concerning the aspects of the existence and supervision and activities of foreigners, each Immigration Office carries out Monitoring activities on Foreigners in its working area, both supervision of the existence aspect and the activity aspect. The existing immigration supervision system includes two methods:

- a. Administrative supervision, regulated in

Article 40 letters a, b, d and e of Law Number 9 of 1992, namely: conducting examinations and research on travel documents, letters or other documents, checklists, photographing, taking fingerprints and managing immigration data from Indonesian citizens and foreigners, examinations are carried out when granting or refusing to grant immigration permits at immigration checkpoints, immigration offices, immigration divisions at regional offices of the Ministry of Law and Human Rights or representatives of the Republic of Indonesia abroad and the Directorate General of Immigration.

- b. Operational supervision

Regulated in Article 40 letters c and e of Law Number 9 of 1992: namely carrying out routine activities and operations in the field by conducting a series of monitoring or investigations through interviews, observation and depiction, surveillance, wiretapping, photography, infiltration, tracking, infiltration, use of information and other activities.

All of these activities are to obtain information or information needed in decision-making in order to formulate and determine immigration policies, especially in terms of supervising every person, both Indonesian citizens and foreigners who enter and leave the territory of Indonesia, supervising the existence and activities of foreigners who violate or do not violate applicable laws and regulations, are

dangerous to public security and order, are hostile to the people and the Unitary State of the Republic of Indonesia, for the smooth and successful investigation, security and mobilization measures are carried out.

The concept of immigration policy in Indonesia refers to the national goal of establishing the Unitary State of the Republic of Indonesia (NKRI), as referred to in the fourth paragraph of the Preamble to the 1945 Constitution. This is the basis and reference for state administrators, especially in terms of formulating policies in the field of Immigration. Then Indonesia's politics in the field of immigration is now not an open door policy but a filtering policy, meaning that the government only allows foreigners who will bring benefits to Indonesia to enter.

In formulating a concept for immigration policy, it is necessary to base it on national scale objectives and common interests rather than establishing the Unitary State of the Republic of Indonesia (NKRI), as defined in the fourth paragraph of the Preamble to the 1945 Constitution. In formulating immigration policy, it is necessary to remember the basis and reference for organizing a country, especially in the field of immigration. The open door policy is not applied in the field of immigration in Indonesia, but rather a filtering policy which means that the government only allows foreigners to enter who are intended to bring benefits to Indonesia.

Strict regulations and qualified Human Resources (HR) are very important aspects in law enforcement against foreigners so that the country's sovereignty is always maintained. There have been many problems of Foreign Citizens (WNA) who violate the provisions of their residence permits while in Indonesia. This should not happen and can be prevented early. As law enforcers, we are also required to have a strong mentality, reliable behavior, and substantial expertise so that we can minimize the misuse of residence permits by these foreigners. Law enforcement by law enforcement officers is formulated by the relevant parties in accordance with their respective authorities for applicable laws and regulations, and is the definition of law enforcement. When Foreign Citizens and Indonesian Citizens are within the national jurisdiction of Indonesia, they are required to

enforce all provisions of the immigration department's laws.

To maintain the integrity of the country, we must also verify that foreigners have explored the existing procedures, everyone who passes through the territory of Indonesia must have complete travel documents and not violate the rules. Every country must have procedures for entering and leaving its country, as does Indonesia. Both from among Foreigners and Indonesian Citizens themselves. In protecting domestic security and comfort, immigration carries out routine supervision of foreigners arriving and leaving the territory of Indonesia or when the foreigner has entered the territory of Indonesia. By implementing supervision and enforcement firmly and appropriately, it can make it easier for us to verify that the foreigner has explored the applicable residence permit regulations in Indonesia and will not interfere with the sovereignty of the Unitary State of the Republic of Indonesia.

Continuous supervision is required for foreigners. There are two things that are the subject of supervision of foreigners in Indonesia, namely supervision of their survival (immigrationally) and supervision of the daily activities of foreigners in Indonesia. Supervision of Foreigners is the authority and responsibility of the Minister of Law and Human Rights during their presence and activities in the Unitary State of the Republic of Indonesia and the responsibility to coordinate government agencies or institutions to carry out their duties related to supervision of Foreigners. In order to supervise Foreigners, it is necessary to collect information and data on every person who enters and leaves the territory of the Unitary State of the Republic of Indonesia and resides in the territory of the Unitary State of the Republic of Indonesia or carries out activities in the territory of the Unitary State of the Republic of Indonesia¹

IV. CONCLUSIONS AND RECOMMENDATIONS

A residence permit granted by a country to a foreigner is a form of state sovereignty as a legal state that has full authority to determine and regulate the limitations for foreigners to live in a country. The permit is not a matter of a foreigner, but is a privilege granted by the state to foreigners. In addition, the limitations regarding

¹Government Regulation Number 31 of 1994 concerning Supervision of Foreigners and Immigration Measures

residence permits are to protect the interests of the nation from various aspects. Efforts need to be made to provide more legal certainty in enforcing immigration law, especially in handling acts that exceed the time limit of a residence permit. Furthermore, it must be carried out by stakeholders.

V. ACKNOWLEDGEMENTS

The author would like to express gratitude to the Panca Budi Development University for their support in the implementation of this research through the 2023-2024 Internal Grant scheme. The author also extends their heartfelt thanks to the entire editorial board of the International Journal of Synergy in Law, Criminal, and Justice (IJSJCJ) for publishing this manuscript.

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