

The Role of Law and Immigration Supervision in Maintaining the Sovereignty of the Indonesian State

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¹ The Role of Law and Immigration Supervision in Maintaining the Sovereignty of the Indonesian State

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Abstract. To improve foreign cash sources, the Indonesian government wants to assist economic growth through tourism. As a result, the government provides free short-term visas to foreign nationals. Immigration has an important part in a country's sovereignty since it is the major entry point. As stated in Article 1 number 1 of Law Number 6 of 2011, Immigration is an agency empowered to oversee the flow of individuals entering and departing Indonesian territory. According to UN figures as of April 2022, Indonesia is the fourth-most populous country in the world. With a population of 278,752,361, it accounts for 3.51% of the global population. Globalization, an expanding economy, and an expanding population have caused people to relocate to other nations. The influence of changes in the economic cycle varies by country. Of sure, it will lead to crime in each country. Criminality is problematic not just economically, but also politically, socially, and in terms of national security. In this regard, immigration must be selective in accepting foreign nationals into Indonesia in order to maintain the stability of state security from external threats, disturbances, and obstacles in order to maintain the sovereignty of the Indonesian state.

Keywords: Sovereignty · Immigration Oversight · Legal Role

1 Introduction

The Republic of Indonesia is a sovereign archipelagic republic located at the international sea crossing of the Pacific and Indonesian oceans. Furthermore, it is surrounded by two continents, namely the Asian Continent and the Australian Continent. With such geographical conditions, Indonesia is a crossroads for shipping and international trade crossings. As a sovereign state, the Indonesian state's legal evolution is inextricably linked to the law that governs foreigners who enter the Republic of Indonesia's territory and Indonesian nationals who leave the country.

According to Article 26 paragraph (1) of the Republic of Indonesia's Constitution, who become citizens are persons of the original Indonesian nation and people of other nations who are legally recognized as citizens. As a result, a legislation known as

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“Immigration” is adopted to govern all types of movement into and out of Indonesian territory.

The flow of individuals entering or leaving the territory of the Republic of Indonesia as well as the monitoring of foreigners in Indonesia, is what is meant by immigration in Chapter 1, Article 1 paragraph (1) of Law Number 6 of 2011. Immigration Law is a part of Indonesia’s legal system, and it even has its own subsystem of State Administrative Law [1].

The presence of foreigners in Indonesia affects immigration regulations and policies. Everyone is facilitated to travel from one country to another. Advances in technology and human resources that are increasingly rapid, as well as the development of facilities and infrastructure in transportation and communication, have caused an increasing traffic flow of the international community.

This also indirectly affects the region’s economic development, which ultimately also means supporting the national economy in general. Another positive impact of the large number of foreigners entering Indonesian territory is the entry of state foreign exchange, which is one of the sources of state income. Besides the positive impact, another thing that arises is the negative impact of the arrival of foreigners.

Many legal events have occurred about the number of violations of immigration permits, especially residence permits, foreigners who live in Indonesia but do not have official documents, and some even deliberately commit unlawful acts to immigration. This is where the need for supervision of foreigners, such supervision is embodied in the immigration function.

As a result, immigration law can be considered a subset of state administrative law since it is part of the administration of the executive authority of the government, i.e., the responsibilities of state administration and governance. To secure the benefit and protection of diverse national interests, the Government of Indonesia has set principles, service methods, and supervisory procedures for the admission and exit of persons into and out of Indonesian territory, as detailed in Immigration Law No. 6 of 2011.

According to the preceding definition, the formulation of the topic under investigation/discussion in this paper are:

1. What is the role of Immigration law in maintaining the sovereignty of the Indonesian State?
2. How is the form of Immigration supervision in maintaining the sovereignty of the Indonesian State?

2 Method

The discussion on the Role of Law and Immigration Supervision in Maintaining the Sovereignty of the Indonesian State uses a qualitative normative legal research approach. What is meant by qualitative normative legal research is research that describes, explains, analyzes, and develops the legal construction of state sovereignty from the perspective of immigration [2].

Data collection methods in this study by analyzing phenomena identifying regulations, describing words from research materials (scientific papers), and other sources of legal materials that have relevance to research discussions [3].

3 Results and Discussion

3.1 The Role of Immigration Law in Maintaining the Sovereignty of the Indonesian State

Immigration is an initial milestone and pillar in the face of threats that can interfere with the sovereignty of the country that comes from outside factors. Juridically, Immigration, according to Article 1 Number (1) of Law Number 6 of 2011 concerning Immigration, explains its understanding as follows:

“Immigration is the case of the traffic of people entering or leaving Indonesian Territory and its supervision in order to maintain the establishment of state sovereignty”.

Then the role of the function of Immigration is contained in Article 1. Number (3) mentioned the Immigration Function, namely: (1) community services, (2) law enforcement, (3) state security, and (4) community welfare development then. Immigration has a vital role in maintaining state sovereignty.

According to Jean Bodin in Abu Daud Busroh, Sovereignty is the supreme power to determine the laws in the state [4]. Therefore, state Sovereignty is the absolute power or supreme power over the inhabitants and territories of the earth and its contents belonging to a sovereign national state system.

In other words, the perspective of immigration and state sovereignty is a very close relationship with the security of the country. According to Kusumaatmadja, State sovereignty is a trait or essential characteristic of a state where the state is sovereign but has its boundaries, namely that the space for the enactment of this supreme power is limited by the territorial boundaries of the country outside of its territory the country no longer has such power [5]. Therefore, by maintaining external threats that can threaten the sovereignty of the country, immigration supervision is formed.

Immigration is the country's gatekeeper. Because immigration is the first and last institution to screen foreigners arriving and departing from the territory of the Republic of Indonesia, the implementation of security functions aimed at Indonesian citizens is spelled out through precautions abroad for Indonesian citizens at the request of the Minister of Finance and the Attorney General's Office. Throughout history, the relationship between a nation's sovereignty and its right to self-determination has frequently been a source of friction and, at times, violent conflict in distinct portions of the state [6].

Talking about the threat to state sovereignty that comes from external factors and *people smuggling* will not be separated from the problem of *illegal* immigrants. Then there's the issue of people smuggling. There are also transnational crimes, which are nearly invariably tied to financial crimes and affect the interests of more than one country. These crimes include transborder organized criminal activity, money laundering, financial crimes, willful environmental damage, and others that can lead to unbalanced political stability in Indonesia and have a wide range of negative effects on social, cultural, and political life. There will be significant social inequality as a result of this transnational crime. Then Immigration must be selective in checking foreigners who want to enter Indonesian territory.

There are several forms of international criminal cases that can threaten the security and sovereignty of countries that have occurred in every country including Indonesia, namely:

1. Person trafficking and people smuggling Human trafficking and smuggling are classified as irregular migration issues. The issue of irregular migration is a global concern. Aside from the issue of human trafficking and smuggling, there are also worries regarding refugees and asylum seekers.
2. The crime of narcotics trafficking and smuggling. Smuggling narcotics and illicit substances is typically a cross-border crime, as makers, couriers, and victims might all be from other nations. As a result, international collaboration is required because it cannot be addressed by a single country alone.
3. Crimes against unlawful fisheries exploitation Indonesia, being an archipelagic country, has a strong interest in defending its land and asserting sovereignty, notably against piracy.

Public awareness of defending the country is essential to deal with these threats. So here always, Immigration also cooperates with other ranks, such as the Coordinating Minister for Political Legal and Security Affairs, the Indonesian National Army, the Police of the Republic of Indonesia, and so on, to anticipate anyone who can threaten security and the safety of the state also maintains the establishment of state sovereignty. Several severe impacts are caused by the increasing presence of illegal immigrants in Indonesia. An impact that may not be felt now but in the next few years. Impact ideologically, politically, legally, economically, socio-culturally, defense security, and national security. The existence of illegal immigrants in Indonesia will have an impact on the philosophy and outlook on the life of the Indonesian state. Differences in national background, language, and culture certainly have the potential to change people's perspectives and lives [7].

3.2 Forms of Immigration Supervision in Maintaining the Sovereignty of the Indonesian State

The Explanation of Article 98 paragraphs (1) and (2) of Immigration Law Number 6 of 2011 is as follows: Subsect. (1) Deterrence authority is an expression of state sovereignty exercised to protect security and public order for immigration considerations. Subsection (2) In this paragraph, the authorized official is the head of a government agency.

As for immigration efforts against law enforcement against Immigration crimes, namely:

1. Immigration Oversight

Immigration oversight is not only at the time they enter and exit Indonesian territory, but also during their time in Indonesian territory including its activities. Supervision is an activity that determines what is being held, namely evaluating the implementation and where necessary to take corrective action so that the implementation takes place with a plan [8]. With surveillance activities in place, the Ministry of Law and

Human Rights is given special authority that other agencies do not have to take certain actions as an immigration administrative measure against foreigners. According to Article 69 of Law Number 6 of 2011 concerning Immigration is "To carry out Immigration supervision of the activities of Foreigners in the territory of Indonesia, the Minister establishes a Foreign National supervision team whose members consist of relevant government agencies or agencies, both at the central and regional levels".

2. Immigration Action

This immigration action is carried out as an implementation of supervisory policies in the field of immigration for foreigners residing in the territory of the Republic of Indonesia who carry out activities that are contrary to applicable laws and regulations [9]. Immigration outside of criminal law actions or investigations falls into the category of Immigration Actions. In addition to the aforementioned positive law provisions, it is also according to international law that immigration actions in the form of deportations are not criminal law acts and this applies *universally* to other countries in the world. Immigration Administrative Actions in the form of deportations may also be carried out against foreigners who are in Indonesian territory because they try to avoid the threat and implementation of punishment in the country.

3. Immigration Quarantine

A temporary home for foreigners facing expulsion, deportation or other immigration measures is immigration quarantine. However, according to the Minister of Law and Human Rights of the Republic of Indonesia Regulation Number M.05IL.02.01 of 2006 on Immigration Detention Centers [9], the immigration quarantine was replaced with an Immigration Detention Center.

The broad scope of immigration now includes not only the regulation, implementation, and supervision of people entering and exiting Indonesian territory, as well as the supervision of foreigners residing in Indonesian territory, but also the prevention of people leaving Indonesian territory and the deterrence of people entering Indonesian territory for the public good. The inquiry into the alleged incidence of this immigration crime has a significant influence on political and economic stability, as well as the country's security and defense. Furthermore, it has a positive influence on state sovereignty, immigration procedure control, and the method for awarding immigration permits. The immigration function, then, is the role of structuring state or government administration [10].

In terms of purpose and role, imaginary borders are significant as a marker of state sovereignty, not only as a queue barrier. At this point, a country's selective policy for those who will enter is also implemented. This is regarded as the expression of a sovereign state's exclusive rights [11].

Then the role of Immigration on state sovereignty is found in the Immigration Checkpoint (TPI). First, checks at TPI are carried out to determine the validity and recording of travel documents in the crossing data used by the holder or owner of the travel document, followed by the imposition of an immigration stamp in the form of entry or exit signs [11].

There are several important points for immigration checks in maintaining state sovereignty, namely: [11]

- a. As the sovereignty of the state, the stamp on the travel document is a symbol of sovereign state power, where the state exercises its exclusive right to screen people who will enter or leave its territory;
- b. Limitation of the authority of state law from the holder or owner of a travel document to the rules of law applicable in a country;
- c. Authentic proof of a person being in a specific territory of a particular country that is legally valid and juridically accountable;
- d. A mark is used to continue the residence permit process for Foreign Nationals (WNA), who will settle and carry out certain activities in the country's territory.

² Since the establishment of the UN international organization, it is necessary to put forward several important matters relating to traditional ways of obtaining territorial sovereignty by states as follows: [6]

1. Modern international law, especially since the founding of the UN, has prohibited using force in international relations, as affirmed in the UN Charter. The acquisition of sovereignty over a particular territory through conquest by violent means is unjustified and illegal.
2. The acquisition and application of sovereignty by a state to a particular territory are governed by and based on the *right of self-determination*.
3. Within the framework of current international law, the use of violent means in international relations cannot be justified, except in some issues based on compelling and legitimate reasons under international law.

Immigration continues to contribute to policy and law enforcement towards the supervision of foreigners, and residence supervision permits foreigners.

As a result of foreigners entering Indonesian territory, immigration infractions and crimes will occur. Foreigners who commit infractions will face hefty penalties. According to the Immigration Law of the Republic of Indonesia No. 6 of 2011 [12], as one of the distinctive and typical acts of the immigration function, immigration measures imposed may take the form of deportation. If an immigration violation is uncovered during monitoring, such as misuse of the stay permit, the stay permit has expired (overstay), and the individual does not have a stay permit, the person will be removed (illegal stay). Immigration activities, including administrative and pro bono actions, are carried out [12].

Theoretically, there are two different foundations, each of which underlies state sovereignty and the right to self-determination. The theoretical foundation is known as the term or approach "*sovereignty first*" and "*self-determination first*" [6].

4 Conclusion

To protect Indonesia's security from external dangers, disruptions, and hurdles, immigration must be cautious in allowing foreign immigrants. The challenge to state sovereignty does not just come from the outside; it also comes in the shape of a new ideology that might undermine state sovereignty, as well as terrorism, trafficking, and smuggling.

Immigration acts as the country's gatekeeper. Immigration is the first and last organization that screens the entrance and exit of foreigners to and from the Republic of Indonesia's territory.

As for immigration efforts and the role of immigration in dealing with threats to state sovereignty by doing, namely:

1. Immigration Oversight

This immigration action is carried out as part of the application of immigration supervisory policies for foreigners residing on the territory of the Republic of Indonesia who engage in activities that are contradictory to applicable laws and regulations.

2. Immigration Action

This immigration action is carried out as an implementation of supervisory policies in the field of immigration for foreigners residing in the territory of the Republic of Indonesia who carry out activities that are contrary to applicable laws and regulations.

3. Immigration Quarantine

An immigration quarantine is a temporary residence for foreigners facing expulsion, deportation, or other immigration actions.

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