

Implementation of Legal Policy in Indonesia in Handling Illegal Immigrants

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ABSTRACT

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Even though it is not a destination country, with the consequence of its geographical location, Indonesia is the final stopover for waves of asylum seekers and refugees going to the destination country, namely Australia. The presence of these illegal immigrants will raise demographic problems (population) and is related to social-economic conflicts and directly proportional to the crime rate. The fact that Indonesia is a country of transit for illegal immigrants is evident from the duration of their stay. As many as 17.50 percent of immigrant respondents stated that they lived in Indonesia for 2-4 weeks. It was that immigrants could pause for their next journey, change smuggling agents, or use transit as a separate strategy before entering Australian territory. Immigrants themselves when entering Indonesian territory must have valid documents by the laws and regulations in force in Indonesia as referred to in Article 8 paragraph (1) of Law Number 6 of 2011 concerning Immigration. Law enforcement against foreign nationals is aimed at issues of falsification of identity, lack of documents, registration of foreigners and provision of foreign control books, abuse of residence permits, illegal entry or stay illegal, expiry of stay permit, being in Indonesia outside monitoring by raids and geographic vulnerability in crossings.

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1. Introduction

Indonesia is home to the world's largest archipelago. Indonesia is in a strategic and one-of-a-kind location. This is evident from Indonesia's geographical location, which is situated between the Pacific Ocean and the Indian Ocean. Indonesia is also situated between two continents: the Asiatic continent and the Australia/Oceania continent. Even though it is not a destination country, with the consequence of its geographical location, the country of Indonesia is the final stopover for waves of asylum seekers and refugees going to the destination country, namely Australia. The presence of illegal immigrants will raise

demographic problems (population) and is related to social-economic conflicts and is directly proportional to the crime rate.(Winarno, 2008)

The United Nations High Commissioner for Refugees (UNHCR) is said to have registered approximately 1.9 million asylum seekers. Of these, 36,200 individuals were recorded as attempting to look for shelter in Australia. However, applying for asylum is not an easy process. From their home country, asylum seekers travel hundreds or even thousands of kilometers. Not inconsistently, the greater part of them experience passing and debacle on their way. Asylum seekers travel in a variety of ways. Shipping lanes on the sea are one of them. Additionally, they are unable to immediately reach their destination. In most cases, they need to make a transit stop in some countries. Asylum seekers from Asia and the Middle East, for instance, frequently make Indonesia their stopover destination when traveling illegally to Australia.(Rahayu, 2022).

Current conditions in Indonesia only have 13 Immigration Detention Centers (RUDENIM) to accommodate asylum seekers who eventually stop in Indonesia.(Hujjailah, 2016). Of course, the number of detention centers is very small when compared to the thousands of asylum seekers who enter Indonesia. The fact that Indonesia is a country of transit (in transit) for illegal immigrants is evident from the duration of their stay. As many as 17.50 percent of immigrant respondents stated that they lived in Indonesia for 2-4 weeks. It was during this time that immigrants could pause for their next journey, change smuggling agents, or use transit as a separate strategy before entering Australian territory.

Asylum seekers to Australia usually make transactions with local ship agents around Sumatran waters. About 57.7 percent of immigrants admit they moved from their originating agent to a local agent in the region. The majority of respondents also admitted that they departed from East Java, Nusa Tenggara, and small islands in eastern Indonesia. The Australian Department of Immigration and Border Force has noted that smuggling agents have played a significant role in bringing immigrants to Australia. These agents are based in Indonesia and they do certain deals with immigrants.

The increasing number of illegal immigrants, as a result of the immigration process by illegal citizens from outside Indonesia, needs to be watched out for because it can open up more crimes caused by economic difficulties due to economic factors and a surge in the number of unemployed. The term immigration is a translation of Dutch immigration, which comes from Latin immigration. The word immigration means the movement of people entering and leaving the country. Immigrants are foreigners who move from one country to another. Migration is the movement of people.

According to Indonesian law, immigrants must carry valid identification when entering Indonesian territory, as stipulated in Article 8 paragraph 1 of Law No. 6 of 2011 on Immigration. Law enforcement against foreign nationals is aimed at issues of falsification of identity, lack of documents, registration of foreigners and provision of foreign control books, abuse of residence permits, illegal entry or stay illegal, expiry of stay permit, being in Indonesia outside monitoring by raids and geographic vulnerability in crossings.(Hujjailah, 2016)

Operationally the law enforcement function carried out by immigration institutions also includes the refusal to issue entry permits, immigration permits, and immigration actions, all of which are forms of law enforcement that are administrative in nature, meanwhile in the case of Pro Justitia law enforcement, namely the investigative authority, the task of investigating (summons) is included. , arrest, examination, search, and confiscation), filing of cases, and submission of case files to the public prosecutor.(Hamidi & Christian, 2021).

Examinations, arraignments, and preliminaries are the underlying comprehension of the lawful cycle in criminal cases, beginning from the cycle took care of by the police as

specialists and analytical officials and different officials, on account of implementing criminal demonstrations in the field of migration, the specialists are Government worker Authorities which implies in the arrangements of Article 4 of the Criminal Methodology Code which peruses Agent is each cop of the Republic of Indonesia.

Illegal immigrants who do not have travel documents can be subject to sanctions based on Article 119 paragraph (1) of Law Number 6 of 2011 concerning Immigration. From several immigrants, we can see that there are illegal immigrants who do not have passports and documents, but they are not processed based on applicable laws and regulations, these immigrants are placed in the immigration detention room to be deported, in the territorial principle study it is explained that the criminal rules in the law Indonesia's invitation applies to everyone who commits a criminal act in the territory of the Republic of Indonesia. Criminal law applies to anyone who commits an offense in the territory of the State. A State must uphold the law and maintain law and order in its territory against anyone (Hamzah, 2010).

The problem in this paper is how is the implementation of legal policies in Indonesia in dealing with illegal immigrants in Indonesia.

2. Materials and Methods

The descriptive analytical technique was used to write this applied paper. This means that data that clearly describe problems directly in the field were used, then the analysis was done, and then a conclusion was made to solve a problem was made. methods of observation and literature review for data collection in order to solve problems and prepare this paper.

In line with the research objectives to be achieved, the realm of this research is included in the actualization of qualitative research, thus, the method will be used. According to Petrus Soerjowinoto et al., a qualitative method is a method that emphasizes the process of understanding researchers on the formulation of problems to construct a complex and holistic legal phenomenon.(Soerjowinoto, 2006)

Normative juridical approach carried out against specific laws and regulations or written, relating to cases of illegal immigrants who are in Indonesia.(Soemitro, 1990) This study describes the condition of the object under examination, namely focusing on regulation and the implementation of Legal Policy in Indonesia in Handling Illegal Immigrants in Indonesia in practice.

3. Results and Discussions

3.1. Implementation of Legal Policy in Indonesia in Handling Illegal Immigrants in Indonesia

In general, criminal law regulates people's lives to establish and uphold public order. People in their endeavors to satisfy their various requirements and interests in life at times experience clashes with each other, which can inflict damage or disrupt the interests of others. The law imposes restrictions on human behavior so that a person cannot act as he pleases, preventing them from causing harm or interfering with the interests of other people in order to meet their needs.(Christianti, 2022)

Migration is not a new phenomenon; people have traveled for centuries in search of better conditions elsewhere. In Indonesia alone, there are 13 immigration detention centers including the Tanjung Pinang detention center, the Balikpapan detention center, the Denpasar detention center, the DKI Jakarta detention center, the Kupang detention center, the Makassar detention center, the Manado detention center, the Medan detention center, the

Pekanbaru detention center, The Jayapura detention center, the Surabaya detention center, and the Semarang detention center are used to accommodate illegal immigrants who enter Indonesian territory, both immigrants who enter not through immigration checkpoints and immigrants who are not equipped with travel documents, but the 13 is felt that the detention center is still not able to accommodate all immigrants, asylum seekers, and refugees who are in Indonesian territory so that there are still many immigrants who live in less suitable places, including living on the sidewalks of the capital city by setting up emergency tents is not worth living in (Uno et al., 2009).

The total number of foreign nationals who entered the Central Java Region both by air and road as of August 2022 based on data from the Immigration Division of the Central Java Regional Office of the Ministry of Law and Human Rights was 8,053 with details of 2,584 foreigners holding Visit Permits (ITK), foreigners holding Permits Limited Stay (ITAS) 5,029 people, Foreigners holding Permanent Stay Permits (ITAP) 217 people, foreigners who are fostered citizens of Correctional Institutions as many as 223 people, and Immigrants as many as 80 people, from the 8,053 foreigners spread across 6 kanim in Central Java, including UPT Kanim Semarang, UPT Kanim Surakarta, UPT Kanim Cilacap, UPT Kanim Pemalang, UPT Kanim Pati, UPT Kanim Wonosobo, during the period from January to August 2022 in Central Java Province found foreigners who violated the form of 77 administrative actions which were processed and carried out deportation to their country of origin besides that there were also *projusticia* violations as many as 14 people were investigated and continued with the prosecution process in court.

Immigrants in the city of Semarang are divided into three, namely immigrants with the status of asylum seekers, immigrants with the status of refugees and immigrants overstay, immigrants with the status of refugees and asylum seekers themselves starting in January 2022 not being placed in the Semarang detention center because of the UNHCR (The United High Commissioner for Roggue) or the UN high commissioner for refugee issues provides temporary shelter facilities at Wisma Husada Jl. Abdurrahman Saleh Semarang, while those who are still in the detention center are foreigners due to the Over Stay problem who cannot return to their country of origin because they do not have the costs, and 2 people with immigration problems could not return to their country (Hiariej, 2016).

The policy that has been carried out by the Semarang City Government is to have held a coordination meeting and evaluation of temporary shelters and implementation of providing access to education for school-age children refugees from abroad in Semarang. On Wednesday, September 18, 2022, at the Semarang Rudenim Office, Jl. Sugriwo Raya No. 2 Krapyak Semarang, in terms of education, these refugees are in elementary school 8 people 2 Kindergarten class 1.1, and class 2.1 is 22 people have passed the competency test.

The result of the Evaluation Meeting was that information regarding conditions was obtained. The health of refugees is still well monitored, and health services are independent and referrals according to their level the MOU started in 2017 with certain hospitals such as Tugu Hospital and medical data, needs for children with special needs and they go to special schools for them, namely Talent School, 8 children are attending school and 22 children who are not yet in school. Competency tests are still being carried out to find out their ability to place education according to their abilities. The education office is still conducting mapping

to find schools that suit their abilities, both from elementary to high school, the Equalization Program or Pursuing The package was handed over to PKBM which is still under the supervision of the Semarang City Education Office (Santoso, 2014) .

The process of globalization has increased the factors that encourage immigrants to seek fortune abroad over the past few decades. As a result, the number of people migrating to Western Europe, Australia, and North America from developing nations in Asia, Africa, South America, and Eastern Europe increased (Sande, 2020).

In a departure from this phenomenon, the deviant practice of moving people illegally to their destination countries due to limitations and immigrants' inability to meet official immigration requirements emerged. As one of the world's countries, Indonesia also has a lot of potential for transnational crime. Indonesia's wide-open free trade and weak law enforcement are not the only factors that contribute to transnational crime; the country's geography also plays a role(Hujjailah, 2016).

The impacts arising from the entry and presence of illegal immigrants in Indonesia are:

- a. The increase in the population of Indonesia, which is not based on birth rates in the original country of Indonesia.
- b. There is indirect exploitation of immigrants by certain parties for material gain.
- c. Increase government spending to provide a living for these smuggling people.
- d. In addition, the impact of the problem of illegal immigrants on the international community is:
 - a) Providing opportunities for NAFZA smuggling to Indonesia.
 - b) The impact on health is that illegal immigrants who come or stop by in Indonesia may bring infectious disease outbreaks that they spread in Indonesia.
 - c) Triggering the occurrence of criminal acts because most of the illegal immigrants living in Indonesia do not have the costs to support themselves and their families, therefore they often commit criminal acts such as stealing and robbing the belongings of residents.

In dealing with illegal immigrants in Indonesia, the government has taken several steps, both in the form of law enforcement and policies to deal with the entry of illegal immigrants into Indonesia.

3.1.1 Law Enforcement.

In 2020 the number of illegal immigrants violating Article 6 of Law No. 6 of 2011 concerning Immigration by violating the provisions while in Indonesia, especially in the city of Semarang such as not having a visa, having their name listed on the ban list, and not having valid travel documents totaling 50 people, in 2019 it increased to 54 people and in 2021 the number 47 people. In 2019 there were 29 people related to violations of Article 119 of Law No. 6 of 2011 concerning Immigration such as falsifying travel documents or visas, increased in 2020 to 36 people, and from that year until August 2022, there were 28 people. Furthermore, the number of illegal immigrants who were deported for violating Article 87 of Law no. 6 of 2011 concerning Immigration, such as being involved in prostitution networks between countries and victims of trafficking in persons in 2020 there were 12 people,

in 2021 there were 12 people, and decreased drastically in 2022 with 2 people. Furthermore, the number of illegal immigrants who violate Article 75 of Law no. 6 of 2011 concerning Immigration with allegations of wanting to carry out dangerous activities that threaten the security of the Indonesian state numbered 14 people in 2020, and 2021 the number was the same as 14 people, in 2022 it dropped drastically to 3 people.

The Indonesian legal system does not specifically regulate the enforcement of illegal immigration laws; instead, it only cites Article 113 of Law Number 6 of 2011 concerning Immigration, which reads;

"Anyone who intentionally enters or exits Indonesian Territory without being examined by an Immigration Officer at the Immigration Checkpoint as referred to in Article 9 paragraph (1) shall be subject to imprisonment for a maximum of 1 (one) year and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiahs)".

Law Number 6 of 2011 concerning Immigration also has not specifically regulated immigrants who have fake passports, and fake visas and is still regulated in general regarding forging travel documents, so this can result in immigrants being free to repeatedly enter the territory of the State. RI because illegal immigrants have not been strictly regulated, and law enforcement has only limited deportation by the immigration authorities.

3.1.2 Policies Implemented by the Government of Indonesia.

Human Rights Instruments in the 1945 Constitution and Law Number 9 of 1992 Concerning Immigration (Immigration Law) are two Indonesian Government policies that are closely related to the problem of illegal immigrants. Before the promulgation of Law Number 9 of 1992 concerning Immigration, there were already many regulations governing immigration issues in Indonesia. Both were colonial relics left behind by the Dutch East Indies and the Indonesian government following the August 17, 1945, Proclamation of Independence. However, as of March 31, 1992, the date of publication of Law Number 9 of 1992 Concerning Immigration in the State Gazette of the Year 1992 Number 33, all previous regulations were declared null and void.

Law Number 9 of 1992 on Immigration does not define illegal immigrants; rather, it defines immigration as matters pertaining to the traffic of people entering or leaving the Republic of Indonesia's territory and the supervision of foreigners in the Republic of Indonesia's territory, including:

- a. A travel document (document) issued by an authorized official from the country that identifies the holder and is valid for travel between countries is required for every foreign national entering Indonesia.
- b. Every foreign national can enter Indonesian territory after obtaining an entry permit in the form of a visa to enter Indonesian territory, issued by an official from The Ministry of Law and Human Rights' Directorate General for Immigration.
- c. Every foreign citizen who enters Indonesian territory must provide actual

information regarding his need to enter Indonesia, whether only for a stopover, visit, limited stay, or permanent stay.

- d. Any foreign national who enters Indonesian territory without an official travel document (document) or does not comply with the existing travel document (document) will be subject to a fine and if forced to be expelled or deported by the Directorate General of Immigration in coordination with the representative of the foreigner's country of origin.

Along with the growing problem of terrorism and the international emigration of criminals, immigration is becoming increasingly difficult. Therefore, the Directorate General of Immigration of the Ministry of Law and Human Rights is required to be able to anticipate the problem of the entry of illegal immigrants (illegal migration) in collaboration with related Ministries and Institutions by laws and regulations applicable.

The paradigm of the immigration function in the implementation of Law Number 9 of 1992 concerning Immigration places more emphasis on service efficiency to support global free market issues but pays less attention to law enforcement and security functions so that the Government of Indonesia through related Ministries and Agencies deems it necessary to change the function broader immigration covers the field of law enforcement and the impact on various aspects of people's lives.

After that, the Indonesian government made a proposal to amend Law Number 9 of 1992 regarding Immigration to the DPR RI. Finally, it was incorporated into Law Number 6 of 2011 concerning Immigration, which was published in Number 52 of the Supplement to the State Gazette of the Republic of Indonesia Number 5126.

Indonesia's national security is ultimately compromised by the presence of illegal immigrants. States are obligated to safeguard values like economic independence, cultural identity, and social stability in addition to maintaining their territorial integrity and political independence. The practice of illegal migration is seen as a threat not only to society, nation, and state but also to the norms of life that are based on respect for human rights. This includes transnational crimes.

So then the problem of illegal immigrants experienced securitization. In the process of securitization here, the Indonesian government is aware of a change in perspective toward the potential threat caused by the problem of illegal immigrants. If previously the issue of illegal immigration was only seen as a problem of population movement, then since the increase in the number of illegal immigrants in Indonesia in 2008, the issue of illegal immigration has increasingly shown a tendency to threaten national security.

Related to the issue of illegal immigrants, the Indonesian government, through the Indonesian National Police (POLRI), carried out securitization. In the process of securitization carried out by the Indonesian government on the issue of illegal immigrants, the functional actor here in Australia. Diplomatic pressure from Australia which continues to urge Indonesia, both through dialogue and financial assistance, to achieve Australia's national interests in terms of curbing the rate of illegal immigration, in particular, to realize the Indonesian Solution, has also influenced the Indonesian government to carry out securitization to change its policy towards illegal immigrants. This can be seen when Indonesia followed up on the Australian government's request to realize the Indonesian

Solution with a decision to strengthen Indonesia's policy lines against illegal immigrants.

Indonesia's decision to toughen its policy lines against illegal immigrants does not necessarily ignore the issue of the human rights of illegal immigrants. Indonesia's involvement in the Bali Process leads Indonesia and countries in the region to resolve the problem of illegal immigrants while still paying attention to the human rights of immigrants, including resolving the Oceanic Viking case. Classically, the concept of security originates from the paradigm of realism in international relations, namely the existence of threats to state sovereignty. However, in the current era of globalization, this single threat no longer applies because security issues are also related to the interests of human security as individuals.

4. Conclusion

After going through the analysis and discussion above, the writer can conclude the following: The Indonesian Government's policy in dealing with illegal immigrants is by enforcing the law according to the applicable law, specifically based on Immigration Law Number 9 of 1992, which was later updated to become Immigration Law Number 6 of 2011, even though the Law has been updated has not been able to provide solutions to several existing problems, including the absence of clear rules regarding illegal immigrants (both criminal and administrative sanctions) because what is regulated in the Immigration Law are only immigrants who even though Indonesia has not ratified the 1951 Refugee Convention, the Principles of State Sovereignty should be used as a basis for Indonesia in making policies regarding the handling of existing illegal immigrants.

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