

Selective Policy in Handling Illegal Immigrants

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ABSTRACT

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The weak legal position of the Indonesian state in tackling the problem of illegal immigrants has resulted in the Indonesian state no longer being a transit country for illegal immigrants from the Middle East to Australia but has become a destination country because the people in Indonesia are known to be friendly and welcoming in dealing with illegal immigrants who later became destination countries with the target of seeking political asylum, human smuggling agents deliberately made Indonesia a destination country for people smuggling. Various efforts have been made by obligated parties, such as the Police institution. The steps taken by the National Police so far have been to arrest illegal immigrants and smugglers, but the investigation process does not use the Special Law, but the Migration Law, so the results obtained do not show significant changes. After Indonesia's independence, Indonesia did not implement the previous policy, namely the "open door policy"; which is considered no longer appropriate. Therefore the Government of the Republic of Indonesia issued a new policy, namely a selective policy that allowed the entry of foreigners only according to their needs and provided benefits for the development of the State and the Government of the Republic of Indonesia.

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1. Introduction

Indonesia is home to the world's largest archipelago. Indonesia's location is very special and important. It can be seen from the geographical location of Indonesia which is between two oceans, namely the Indian Ocean and the Pacific Ocean. The geographical location of Indonesia is also between two continents, namely the continent of Asia and the continent of Australia/Oceania. 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).

Immigrants are people who come from other countries and live in a country. In the past, the term immigrant was not limited to humans as perpetrators, but could also be used for animals and objects that moved across country borders (Hujjailah, 2016). Initially, this population movement occurred due to wars and natural disasters, so the residents looked for other, safer areas. Then the term immigrants were narrowed down to humans only after countries experienced developments that automatically created laws and regulations. Law No. 6 of 2011 concerning Immigration stipulates that:

"To settle in Indonesian territory, a permanent residence permit is required which is given to foreign nationals who have valid travel documents. If the foreign national does not have a valid travel document and unclear permits, the immigration official can expel or deport from Indonesian territory or refuse entry to Indonesian territory."

There are two significant regulatory elements in the Immigration Law of the Republic of Indonesia Number 6 of 2011, namely:

- a. arrangements for a variety of issues pertaining to the flow of people into, out of, and around the Republic of Indonesia's territory;
- b. Arrangements regarding various surveillance not only for foreigners but also for Indonesian citizens in Indonesian territory, to uphold state sovereignty.

Current conditions in Indonesia only have 13 Immigration Detention Centers (RUDENIM) to accommodate asylum seekers who eventually stop in Indonesia (Hamidi & Christian, 2021). Of course, the number of detention centers is minuscule 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 the immigrants could pause for their next journey, change smuggling agents, or use transit as a separate strategy before entering Australian territory.

The high number of foreigners entering the territory of Indonesia requires the Government of Indonesia to adopt certain policies so that the negative impacts arising from these migration flows can be minimized. Through a selective policy, the Indonesian government selects which foreigners are permitted to enter the Indonesian state's territory. The Indonesian state will not allow all foreigners to enter its territory. The selective policy will be applied more selectively to every foreigner who comes from vulnerable countries. Each country has its terms for categorizing these vulnerable countries. In Indonesian immigration terms, countries that have a certain level of vulnerability are known as calling visa countries.

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 residence permit, being in

Indonesia outside monitoring by raids and geographic vulnerability in crossings (Santoso, 2014).

Refusals to grant entry permits, immigration actions, and refusals to issue immigration permits are all examples of administrative forms of law enforcement carried out by the immigration institution. On the other hand, Pro Justitia law enforcement is 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 (Sudiar, 2019).

The initial understanding of the legal process in criminal cases begins with the process handled by the police as investigators, investigative officers, and other officers. In the case of enforcing criminal acts in the field of immigration, the authorized party is a civil servant official. The first understanding of the legal process in criminal cases begins with investigations, prosecutions, and trials. as defined by Article 4 of the Criminal Procedure Code, which states that any official of the Republic of Indonesia Police is an Investigator.

Based on Article 119, paragraph 1, of Law No. 6 of 2011 Concerning Immigration, illegal immigrants without travel documents may be subject to sanctions. 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 principal 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 (ARDIYANTI, n.d.).

The problem in this paper is how is the Implementation of Selective Policy Policy in Indonesia in Handling Illegal Immigrants in Indonesia.

2. Materials and Methods

The descriptive analytical method was used to write this applied paper. This means that data that clearly describes problems directly in the field were used, and then the analysis was done and the problem was solved. Observation and literature review as methods of 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 authentic qualitative research, thus a qualitative approach 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.[8]

Normative juridical approach carried out against certain laws and regulations or written, linking to issues of illegal immigrants who are in Indonesia.[9] The study describes the condition of the object under study, i.e., focusing on regulation and the Implementation of Selective Policy Policies in Indonesia in Handling Illegal Immigrants in Indonesia in practice.

3. Results and Discussions

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

History records that Indonesia has long been the prima donna of foreign nationals.

During the colonial era, Indonesia's wealth of natural resources, namely plantation commodities, which had a high selling value on the world market, made the territory of Indonesia a bone of contention for European countries to dominate. When colonized by the Dutch East Indies government, the established immigration policy was an open policy (*opendeur politiek*). This policy made it as easy as possible for foreigners to enter Indonesia, live there, and become Dutch East Indies citizens. When Indonesia gained independence, the Dutch East Indies Government's immigration regulations were finally repealed and replaced by new ones that supported Indonesia's independence spirit (Sande, 2020).

All sovereign countries must carry out the function of inspecting and supervising every foreign citizen who wants to enter their country's territory to uphold state sovereignty. Every foreign national who wants to enter the territory of another country will be selected and sorted. Only foreigners who meet certain conditions will be allowed to enter a country's territory based on the immigration policy of each country. The selection policy that is carried out selectively towards foreigners in the field of immigration is a basic theory or principle that applies universally in all countries, including in the State of Indonesia.

The Indonesian government uses the Indonesian immigration function when examining and supervising foreigners. The Indonesian immigration function is the state government's responsibility for facilitating community welfare development, immigration services, law enforcement, and state security (Article 1, RI Law Number 6 of 2011 concerning Immigration). The function will be applied to all foreign citizens (foreigners) from the time the foreign nationals apply for permission to enter Indonesian territory, check documents at the immigration checkpoint (TPI), while they are, carry out activities, and reside in the territory of the Republic of Indonesia until the person concerned to escape the sovereign territory of the State of Indonesia. Specifically, the immigration function is carried out by the Directorate General of Immigration, Ministry of Law and Human Rights of the Republic of Indonesia, in coordination with relevant ministries and state agencies.

The Immigration Law of the Republic of Indonesia No. 6 of 2011 specifically outlines Indonesia's selective immigration policy for foreign nationals. According to the law, any foreigner who plans to enter Indonesia and obtain a residence permit must uphold human rights and values while adhering to the purpose of their visit. In addition, the selective immigration policy of Indonesia explains that only foreigners benefit from and harm nothing.

those who will be permitted to enter the State of Indonesia's territory and maintain public order.

The application of selective policies is one of the national interests of the Indonesian state in the field of immigration to protect the Indonesian state's sovereignty from the threats that the entry of foreigners may face. Looking at Indonesia's selective immigration policy, there are two key elements. It is a security and prosperity approach that is expected to be met or unencumbered by the entry of foreigners into Indonesia's sovereign territory. In practice, you have to balance these two approaches, one approach is as significant as the other.[11] These two approaches go hand in hand to select every foreign national who wants to enter the territory of the Indonesian state.

The security approach in this policy is not only related to the traditional security approach, namely, state security related to militarization and conflict [12] as part of state

sovereignty, but also related to non-traditional security, namely human security from Indonesian citizens. The material dimension will be closely related to defining the prosperity approach, as the arrival of foreigners may benefit Indonesia's economy. However, in this context, welfare encompasses a wide range of social and psychological dimensions, including the capacity to give and receive, to receive appreciation and respect, to contribute to useful work, and to have a sense of trust and belonging in society.[13] In short, how do these foreigners participate meaningfully and positively in the life of Indonesian society? Indonesia's selective immigration policy is applied to all foreign nationals who enter the territory of the Indonesian state without exception. The implementation of this policy is based on the premise that not all foreigners from developed countries or countries that are stable in terms of security can benefit the Indonesian state. Conversely, not all foreigners from poor or vulnerable countries if they enter Indonesian territory will incur losses. The selection of foreign nationals is vital to prevent the negative impacts that arise from their entry into the territory of the State of Indonesia.

The entry of foreigners into Indonesian territory with various purposes and interests has had various effects in all fields. The influence that occurs not only has a positive impact but also sometimes brings negative effects. One of the negative impacts arising from a large number of foreigners entering the territory of the State of Indonesia is the increase in immigration violations.[14] The granting of entry permits to foreigners from calling visa countries is based on the principle that these foreigners could have a positive impact on the country's foreign exchange earnings and will not threaten public security and order under the intent of implementing a selective policy that forms the basis of the Indonesian Government's immigration policy. The supervisory function must be performed optimally to minimize the negative effects of foreign arrivals and preserve Indonesia's sovereignty.

The process of collecting, processing, and presenting immigration data and information for Indonesian citizens and foreigners in order to ensure compliance with immigration statutes and regulations is known as immigration control (Article 1 point 2 of Government Regulation Number 4 of 2017 concerning Procedures Immigration Control). The immigration control system includes administrative supervision such as checking travel documents, letters, or other documents, photographing, fingerprinting, and managing immigration data at immigration checkpoints, immigration offices, or representatives of the Republic of Indonesia abroad and the Directorate General of Immigration, along with field supervision or operational, such as monitoring or investigation utilizing interviews, observations and descriptions, reconnaissance, wiretapping, use of information, and other activities.[14]

Administrative supervision for foreigners from calling visa countries is performed more strictly and selectively. Meanwhile, the field supervision system for foreigners from calling visa countries in Indonesian territory is carried out in the same way as the supervision of foreigners in general, namely through monitoring activities and monitoring operations. Field supervision is carried out strictly in places where foreigners are located, such as hotels and inns, crowd centers, and entertainment venues.[14] If proven violating, the foreigner may be subject to immigration administration action. Immigration administrative actions are imposed on foreigners in Indonesian territory for carrying out dangerous activities that are

suspected of disturbing public order or not respecting and violating the laws and regulations in force in Indonesia (Wulandari & Andaryadi, 2019: 5).

The types of immigration administration actions that can be imposed on every foreigner, including foreigners from calling visa countries, are as follows: inclusion on the prevention list, which includes a ban on leaving Indonesian territory as well as a deterrent or ban, restriction, change, or crossing out of home grant; restriction on one or more specific locations within the Indonesian territory; the obligation to reside in a particular area of Indonesia's territory; the imposition of costs; and the deportation of foreigners from Indonesia's territory or their forced expulsion (Wulandari & Andaryadi, 2019).

A country that is considered to have a certain level of vulnerability in terms of ideological aspects, political aspects, economic aspects, social aspects, cultural aspects, aspects of state defense and security, and immigration aspects is a calling visa country, as stated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.Hh-01.Gr.01.06 of 2012 concerning Procedures for Determining Calling Visa Countries and Granting Visas to Citizens of Calling Visa Countries (Ministry of Law and Human Rights of The Indonesian government is in control of deciding which nations will be included in the calling visa classification. More specifically, the Republic of Indonesia's Ministry of Law and Human Rights represented countries with calling visas. The Minister of Law and Human Rights establishes a coordinating team of assessors to determine calling visa countries. These assessors make recommendations regarding the degree of vulnerability of particular nations, which include the following elements: the Ministry of Human Rights and the Law; Internal Affairs Ministry; Department of Foreign Relations; Ministry of Migration and Human Resources; The National Police of Indonesia; Office of the Attorney General; State Knowledge Organization; the Indonesian National Armed Forces' Strategic Intelligence Agency; and the National Narcotics Agency (Article 2 of the Republic of Indonesia's Minister of Law and Human Rights No. 2012's M.Hh-01.Gr.01.06).

Determination of calling visa countries is carried out with an in-depth study of the conditions of these countries based on defining goals, choices of action, and utilizing national capabilities to achieve national interests as described by K.J. Holsty. This type of foreign decision is a group decision consisting of a coordinating team on behalf of the state in order to achieve the goals of Indonesia's national interests. In this case, the national interests of the Indonesian state are closely related to the selective policy in which only people who are useful (prosperity approach) and who do not endanger domestic security (security approach) will be allowed to enter the territory of the Indonesian state. As one manifestation of the selective policy in Indonesia's immigration function, several countries that are considered to have a certain level of vulnerability are included in the category of calling visa countries (Djati, W.K., & Christian, 2019).

4. Conclusion

The selective policy is the foundation upon which Indonesian immigration is carried out against foreigners wishing to enter Indonesian territory. The Immigration Law of the Republic of Indonesia No. 6 of 2011 outlines the policy's fundamental principles. The

standard of particular approach is to figure out each unfamiliar resident who needs to enter An Indonesian area, just outsiders who give benefits and don't imperil security and public request will be permitted to enter and be in the region of the Territory of Indonesia. The policy's construction aims to safeguard Indonesia's national interests, i.e., its sovereignty and security, which may be threatened if foreigners are authorized to enter freely. Indonesia's selective immigration policy is based on a balanced guard and welfare approach.

The application of a selective policy is carried out much more strictly and selectively towards foreigners from calling visa countries. It is due to the condition of countries calling visas which are considered vulnerable in terms of ideological aspects, aspects of politics, economics, society, culture, state defense and security, immigration, and other aspects The calling visa country category currently includes nine countries: Afghanistan, Guinea, Israel, North Korea, Cameroon, Liberia, Niger, Nigeria, and Somalia. Determination of the calling visa country is a foreign policy of the State of Indonesia by taking into account the recommendations of the assessment coordinating team formed by the Government of Indonesia and adjusting Indonesia's national interests.

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