

Indicators of Harmful Activities by Foreign National in Indonesia Legal Perspective

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Abstract

The vagueness of norm related to the regulation concerning harmful activities and threatening security and public order by foreign national residing in Indonesian territory has resulted in the emergence of multiple interpretations related to prohibited actions carried out by them, hence they are not subject to immigration administrative actions. This study aimed to determine the indicators of activities that endanger public security and order by foreign national residing in Indonesian territory. This was normative legal research using statutory approach with document study techniques and interpretation techniques. The study indicated that the indicators of activities that endanger public security and order by foreign national residing in Indonesian territory are proven to have carried out activities that were contrary to immigration, both administrative or criminal, proven to have carried out activities that met the elements of general crimes and specific crimes in the territory of Indonesia, proven to have committed violations that were contrary to norms, ethics, and custom in society that could be troubling as well as causing chaos in society.

Keywords: Foreign National; Harmful Activities; Threatening Security; Indonesia

Introduction

In the era of globalization, the movement and exchanges of human beings, goods and services had speedup rapidly.[1] This is supported by the acceleration of advances in science and information technology.[2] Air tickets can be purchased easily nowadays, which creates a borderless world.[3]

The most visible impacts of globalization in economic can be seen from the difference in the cost of flights from the past to the current one due to the growing number of new airlines, both domestic and international, resulting in price competition, hence the price of airline tickets is getting cheaper. Advances in technology and cheap flight ticket price have resulted in a more comprehensive market share related to flights to all elements of society. The fact about the ease of travelling abroad certainly has an impact on the social life of a country that is domiciled as a visiting country, both positive and negative impacts.

There are several positive economic impacts that are commonly listed namely increased foreign exchange earnings, increased income, and increased employment in destination area

within the country.[4] However, the positive impacts also come with negative impacts. One of the negative impacts is the increased of violation and crime rate that conducted by foreign national in the destination area within the country.[5]

Following the globalization, there are several transnational organized crimes, namely: human-trafficking, women and children trafficking, prostitution, cybercrime, money laundering, drug trafficking, fraud, and robbery.[6] The stay permit that granted by the Immigration Officer to enter the territory of a country is sometimes misused by the permit holder. This condition causes increase in cases of immigration permit violation. The misused of permit by the permit holder also happened in Indonesia. [7]

Globally, various challenges have emerged, including human rights violations, environmental degradation, and rising inequality, all of which are gaining prominence as push forces from emerging countries. Migration is having a growing impact on domestic politics, state security, and regional connections. [8]. To preserve and uphold state sovereignty, “the immigration officer has the authority to impose immigration administrative action on foreign nationals in the country who engage in harmful activities”.

In Indonesia, the tasks and functions in Immigration affairs is carried out by the Ministry of Law and Human Right under the Directorate General of Immigration and Human Rights. There are several immigration functions shall be carried out, namely “providing immigration services, law enforcement, national security, and facilitating the development of public welfare”. [9].

The issuance of Law No. 6 of 2011 concerning Immigration (hereinafter Law on Immigration) is aimed to protect the sovereignty of Indonesian Territory in the interest of sustaining national and state order in the pursuit of a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter the 1945 Constitution). The Law on Immigration is expected to be able to serve as legal basis in the regulation, service, and supervision in the field of immigration, especially if immigration violations are found committed by foreign national residing in Indonesian territory.

Generally, in terms of law enforcement in the field of immigration in Indonesia can be conducted in 2 (two) ways, namely 1) Immigration Administrative Action (non-justicia) and 2) Court (pro-justicia) [10]. According to the provision of the Article 75 paragraph (1) of the Law on Immigration, it is stipulated that:

“An Immigration Officer has the authority to enforce Immigration Administrative Action to Foreign National residing in Indonesian Territory who engage in harmful activities and which presumably threatening security and public order or disrespectful or contravene the applicable legislation.”

According to the data in 2020, the Directorate General of Immigration and Human Rights have imposed immigration administrative action to 5,105 foreign national. Of these, there are 1,528 of them have been deported for violating the immigration rules in force in Indonesia. The highest number is detention sanctions or the requirement to reside in a place around 1,745 cases, deportation about 1, 582 cases, and prevention as many as 1,102 cases. [11] The high number of immigration violations committed by foreign national deserves to be taken seriously by the government as a manifestation of the enforcement of sovereignty over Indonesian territory.

At a glance, the provisions in Article 75 paragraph (1) of the Law on Immigration have given authority to Immigration Officer to take necessary actions related to the existence of harmful activities that presumably threatening security and public order carried out by the foreign national. However, there is no specific criteria within the elucidation of Article 75 paragraph (1) of the Law on Immigration that emphasizes the indicator of harmful activities that presumably threaten security and public order carried out by the foreign national.

Based on the abovementioned, the crucial issues studied in this research include the regulation of the traffic of foreign national visiting Indonesia and the indicators of harmful activities that presumably threaten security and public order carried out by the foreign national in the Indonesian territory.

Research Method

This research used normative legal research that analyze the issue on norms. The data used in this research is secondary data, namely primary legal materials sourced from legislation and secondary legal materials sourced from literature, books, and journals. The data is collected and analyzed qualitatively without using graphs and numbers.

Result and Discussion

Regulation concerning Foreign National Entry into Indonesian Territory

The high number of Foreign Nationals enter and reside in the territory of Indonesia has an impact on the need for the Government of Indonesia to develop strategies to prevent negative impacts arising from the entry of Foreign Nationals through selective policy. [12] According to the Law on Immigration, the strategy or policy that can be taken as prevention is the selective policy upholding the values of human rights. The Law on Immigration underlines that “based on policy and to preserve national interests, only Foreign Nationals who benefit the country and do not constitute a threat to security or public order are authorized to enter and remain in Indonesian territory”.

The government of Indonesia decided to simplify bureaucratic procedures in the documentation of Foreign Nationals who enter and reside in the territory of Indonesia to facilitate investors, foreign workers and foreign tourists who are expected to provide benefits for the economic development of Indonesia. Selective policy is implemented by taking into account the balance between security approach and the prosperity approach. [13]

This policy is intended to protect the national interest by selecting Foreign Nationals who enter and reside in Indonesian territory, therefore all Foreign Nationals who will enter the territory of Indonesia shall adjust their travel documents to ensure compliance with the prevailing law in Indonesia. To apply border security approach, an immigration control is implemented to every visitor who transits, transfers, enters and leaves a nation through airports, seaports and border crossing. [14]

All Foreign Nationals who will enter and reside in the territory of Indonesia must fulfil all regulations related to fulfilling the requirements to enter the territory of Indonesia. There are 3 (three) main requirements shall be fulfilled by the Foreign Nationals in order to enter and reside in the territory of Indonesia, as follow: 1) a legal and valid Travel Document, for instance: Passport that is valid for a minimum of 6 (six) months; 2) have a legal and valid Visa (unless otherwise specified); and 3) clearance from an Immigration Officer at an Immigration Checkpoint.

The Article 8 paragraph (1) of the Law on Immigration stipulated that:

“Any person who enters or exits Indonesian Territory is obligated to have a legal and valid Travel Document.”

The term “legal and valid Travel Document” refers to “any travel document issued by authorized officials and valid for at least 6 (six) months before its expiry date”. There are several documents that categorized as legal and valid Travel Document, namely:

- a. “Passport, consists of diplomatic passport, service passport, and ordinary passport;
- b. United Nation Laissez-Passer;
- c. Travel Document in Lieu of a Passport, consists of Travel Document in Lieu of a Passport for an Indonesian citizen, Travel Document in Lieu of a Passport for a Foreign Nationals, Border crossing travel document or border crossing pass;
- d. Refugee Travel Document and others”.

Further, the Article 8 paragraph (2) of the Law on Immigration stipulated that:

“Every Foreign National who enters Indonesian Territory is obligated to have a legal and valid Visa, unless otherwise stated under this Law and international agreements”.

The provision of Article 8 paragraph (2) of the Law on Immigration emphasizes that to all Foreign Nationals who will enter and reside in the territory of Indonesia must have a valid visa or stay permit or re-entry permit.[15] According to the Article 1 point 18 of the Law on Immigration, it is stipulated that:

“Visa of the Republic of Indonesia, hereinafter referred to as Visa means a written statement given by an authorized officer at Indonesia Missions Abroad or other places determined by the Government of the Republic of Indonesia containing an approval for a Foreign National to travel into Indonesian Territory and a prerequisite for granting a Stay Permit.”

Along with a legal and valid travel document and visa, all foreign nationals who enter and live in the territory of Indonesia are required to pass immigration clearance administered by an Immigration Officer at an Immigration Checkpoint.[16] The immigration clearance is aimed to:

- a. “Ensure the validity of the identity of the holder of travel document;
- b. Ensure the validity of the travel document;
- c. Ensure that the Foreign Nationals who enter are excluded in the Entry ban list and bring benefit to Indonesia.”

After receiving an Entry Stamp, a Foreign National who has met the conditions is permitted to enter Indonesian territory. [17]. However, If a Foreign National is unable to comply with the conditions, the Immigration Officer has the ability to reject entry into Indonesian territory. It is a form of protection against national interest and the enforcement of sovereignty over Indonesian territory conducted by the Immigration Officer [18].

Harmful Activities by Foreign National in Indonesia Legal Perspective

All Foreign Nationals who enter and reside in the territory of Indonesia shall comply with all prevailing law and regulation in Indonesia. The rule of the existence and activities of foreigners in a country is the essence of territorial sovereignty inherent in a country, then the

state has the right to determine the limitations and to the existence of an activity that may or can be done by foreigners. [19]. Although there is no specific regulation in Indonesia that regulates things that allowed or not allowed to be done by foreign nationals who enter and reside in the territory of Indonesia.

There are several cases which involved foreign nationals that considered as harmful activities and threatening security and public order. On December 2020 at Tanah Ampo Port, there were 2 (two) foreign nationals threw themselves and launched the bike off a dock and into the water. This action could allegedly breach environmental law in Indonesia given that the bike that sunk will ruin the ecosystem of the sea. (Kadafi 2020)

On June 2021 in Canggu, Badung Regency, several foreign nationals were found conducting sex party and doing porn through social media. These activities violate the moral norms of the Balinese people. (Abiyyu 2021)

In addition, on July 2021 in North Kuta, Badung Regency, 3 (three) foreign nationals were arrested for violating health protocols during the social-distancing, which known as “Community Activities Restrictions Enforcement” or CARE (“Pemberlakuan Pembatasan Kegiatan Masyarakat or PPKM”) due to the pandemic Covid-19. They were arrested because they were considered to be endangering the safety of the community.[20]

According to the cases on the foreign nationals abovementioned have gone through the law enforcement process. Law enforcement refers to the activities of the state and local agencies responsible for maintaining public order and enforcing the law in accordance with the prevailing law.[21]

The law enforcement can be carried out by the Directorate General of Immigration and Human Rights, namely law enforcement of any Immigration criminal act or immigration administrative action. Immigration criminal offenses are distinct from normal criminal law in Indonesia; hence, its formal and material law are distinct.

Given that the national interest is the interest of the Indonesian people, the monitoring of Foreign Nationals also necessitates public engagement. The public’s active engagement is necessary in reporting Foreign Nationals who are known or suspected of unlawfully staying in Indonesia Territory or misusing their immigration permission.

Along with the law enforcement of immigration criminal offenses, the immigration administrative action is also the authority of Directorate General of Immigration and Human Rights. According to the Article 1 point 31 of Law on Immigration, it is stipulated that:

“Immigration Administrative Action means any administrative sanction imposed by an Immigration Officer against a Foreign National without judicial process.”

If a Foreign National residing on Indonesian territory engages in harmful acts that endanger security and public order, or is disrespectful or violates the appropriate legislation, the immigration administration may take action as follow:

- a. Including their names in the list of Exit Ban or Entry Ban;
- b. Restriction, change, or cancellation of their Stay Permit;

- c. Prohibition from residing in one or some particular places in Indonesian Territory, this prohibition is addressed to a Foreign National whose residency in a particular Indonesian Territory is not allowed by the government;
- d. Obligation to reside at certain place in Indonesian Territory, such as the Immigration Detention Centre, Immigration Detention Room, or other places.;
- e. Liable to a fine; and/or
- f. Deportation from Indonesian Territory”.

There are several things that can be considered and the reasons for granting Immigration Administrative Actions, namely:

- a. According to the consideration of national, political, economic, social and cultural interest, as well as security which is deemed more effective to carry out Immigration Administrative Actions;
- b. There is sufficient evidence that the person concerned intends to be in Indonesia, and if submitted to court, will use legal remedies and or will be used by foreigners who are fugitives from their own country (involved in serious cases or fleeing from conflict countries);
- c. At the discretion of the competent authority decides that the Immigration Administrative Action will be more efficient and effective. [22]

Seeing the high number of foreign nationals who are subject to Immigration Administrative Actions, it proves that many foreigners conduct things that endanger security and public order. It is contrary to the selective policy adopted by the Law on Immigration.

According to the Cambridge Dictionary, Endanger means “to put someone or something at risk or in danger of being harmed, damaged, or destroyed”. [23] Further, Order means “the way in which people or things are arranged, either in relation to one another or according to a particular characteristic”. [24] Public order means “the state of normality and security that is needed in a society and that should be pursued by the state in order to exercise constitutional rights and to thus benefit a harmonious development of society”. [25]

Thus, harmful activities that threatening security and public order shall be interpreted as a behaviour or activity carried out by a Foreign National that threatens safety or poses a danger to himself, others or the community. Related to public order, that the behaviour or activities of these Foreign National have a negative effect on the normality and security conditions in society.

The harmful activities that threatening security and public order has been regulated under the Book III of Indonesia Penal Code concerning Misdemeanours, especially in Chapter I – Misdemeanours concerning the general security of persons and property and the public health in the Article 489 until Article 502 of the Indonesia Penal Code. According to the Indonesia Penal Code there are several actions classified as misdemeanours, namely:

- a. “Mischief committed against persons or property, whereby danger, injury, or inconvenience;
- b. Any person who, while being in a state of drunkenness, either in public obstructs the traffic or disturbs the public order, or threatens the security of another person, or performs an act whereby, for the prevention of danger of life of health of third party;

- c. Any person who unlawfully on the public road obstructs another to move liberty or with one or more others keeps obtruding himself upon another against his explicitly declared will or keeps following him in an annoying manner.”

Further, the Indonesian Penal Code also regulates Misdemeanours relating to public order under the Chapter II of the Book III in the Article 503 until 520. There are several things that are prohibited under these provisions, which include:

- a. “Any person who causes tumult or disturbance whereby the nocturnal tranquillity may be disturbed;
- b. Any person who causes tumult near buildings destined for a lawful divine service or for the administration of justice during a service or a session;
- c. Any person who begs aims in public;
- d. Any person who roams about without means of subsistence;
- e. Any person who, without the permission of the head of the police or of the official designated by the head of the police stages of public festivity or an amusement; states a procession on the public road.”

Based on the abovementioned, there are several indicators in terms of harmful activities that threaten security and public order by foreign nationals, namely:

- a. Proven and presumably carrying out activities that are contrary to the immigration, both administrative and criminal
- b. Proven and presumably carrying out activities that meet the elements of general crimes and specific crimes in the territory of Indonesia;
- c. Proven and presumable committing violations that are contrary to norms and ethics which are part of custom in society that can be disturbing or cause chaos in society.

Every foreign national who enters and resides in the territory of Indonesia is obligated to comply with all immigration provision that prevail in Indonesia.[26] Any violation related to the provision of immigration in Indonesia can lead to criminal penalties, which also known as immigration crime.

Based on Chapter XI of the Law on Immigration concerning Criminal Provision, there are several activities carried out by Foreign National that can lead to criminal acts if proven and presumably conducting the activities, namely:

- a. “Intentionally entering or departing Indonesian territory without first obtaining immigration clearance from an Immigration Officer at an Immigration Checkpoint;
- b. Failing to give any required information on his or her personal identify and/or family identity, as well as to disclose any changes in civil status, citizenship, occupation, Sponsor, or change of address to the local Immigration Office;
- c. Failing to provide and submit his or her Travel Document or Stay Permit when requested by an Immigration Officer on duty for Immigration supervision;
- d. Entering and/or living in Indonesian Territory without a valid Visa and Travel Documents;
- e. Intentionally using Travel Document that is known or reasonably presumed to be false or forged;
- f. Proven to have committed the criminal act of People Smuggling;
- g. Intentionally using a fraudulent or counterfeit Visa, Entry Stamp, or Stay Permit for personal use or other people’s entry, departure, or residence in Indonesian Territory;

- h. Intentionally misusing or engaging in activities that are contrary to the goals and objectives of the Stay Permit given to them;
- i. Without permission to dwell in a certain territory designated as a restricted area for Foreign Nationals;
- j. Engages in a false marriage in order to get Immigration Documents and/or citizenship status of the Republic of Indonesia”.

Foreign Nationals can be subject to Immigration Administration Actions other than violating immigration provisions, if they are proven and presumably to have committed a crime that meet the provisions of Indonesia Penal Code and other prevailing criminal law and regulation in Indonesia. A criminal act committed by a Foreign National is an act that can be punished because it is a violation of the law or criminal law committed by a foreigner.

There are several criminal acts that usually carried out by Foreign National in Indonesia, namely:

- a. General crimes, namely, theft, embezzlement;
- b. Specific crimes, namely, drug trafficking, skimming, carding, as regulated under the Law No. 11 of 2008 concerning Electronic Information and Transactions.

In addition to violating the laws and regulations abovementioned, Foreign National can also be subject to immigration administration actions if they are proven to have violated the norms, which are part of the customs in society that can be disturbing or cause chaos in the community. Customs are actions that are still carried out repeatedly in society regarding a certain matter and are accepted by the community, because they are considered as something that should be, therefore deviations from these actions are considered as a violation of legal belief that live in society, then a legal habit arises which by the association of life in society is seen as law. [27]

Recognition of custom as the basis for law enforcement because it is a part of the source of law. As a source of law, customs should be in accordance with the values contained in Pancasila as the source of all sources of law in Indonesia.

Based on the abovementioned, Immigration enforcement at the various points of entry and the surveillance of non-citizens in the interior are presented as a means to defend the nation's security. In this context, discussed immigration measures as a part of national security policy is both meaningful and necessary. [28] According to the Article 75 paragraph (2) of the Law on Immigration, the Immigration Administrative Action may take the form of:

- a. “Including their names in the list of Exit Ban or Entry Ban;
- b. Restriction, change, or cancellation of their Stay Permit;
- c. Prohibition from residing in one or some particular places in Indonesian Territory, this prohibition is addressed to a Foreign National whose residency in a particular Indonesian Territory is not allowed by the government;
- d. Obligation to reside at certain place in Indonesian Territory, such as the Immigration Detention Centre, Immigration Detention Room, or other places.;
- e. Liable to a fine; and/or
- f. Deportation from Indonesian Territory.”

In its implementation, deportation is considered as the most effective Immigration Administrative Action. Within the discourse of international law the practice of deportation

can be derived from the sovereign right of states to control their territories and the discretion they have regarding the admittance, and residence of aliens.[29]. According to the Article 1 point 36 of the Law on Immigration, Deportation means an “action to forcibly remove a Foreign National from Indonesian Territory”.

Deportation or expulsion are recognized as the right of a country to expel Foreign National who are in their country. [22]. Deportation as a unilateral act carried out by the state to any Foreign National who carried out harmful activities that endanger public security and order. It is very crucial to be done in order to maintain state sovereignty, even though it is solely based on the interests of the state itself.

Conclusion

Based on the abovementioned, it can be concluded that there are several indicators in terms of harmful activities that threaten security and public order by foreign nationals, namely: a) Proven and presumably carrying out activities that are contrary to the immigration, both administrative and criminal; b) Proven and presumably carrying out activities that meet the elements of general crimes and specific crimes in the territory of Indonesia; and c) Proven and presumable committing violations that are contrary to norms and ethics which are part of custom in society that can be disturbing or cause chaos in society. Given that there is no specific regulation and elucidation concerning the indicators of harmful activities, then it is important to add a specific explanation in the elucidation of Law on Immigration to provide legal certainty for Foreign Nationals and the Indonesian people.

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