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## ENFORCEMENT OF ADMINISTRATIVE IMMIGRATION LAWS

### Legal Study on Immigration Laws Towards Foreign Citizens in Indonesia (Analysis of Deportation Cases)

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#### ABSTRACT

*The deportation of foreigners for committed violations is considered as the last resort taken by the state to address foreign nationals who are believed to disrupt public order, endanger public safety, or refuse to comply with applicable laws and regulations. The research problem formulation is how the implementation of deportation according to Immigration Law Number 6 of 2011 and the analysis of the case. The research method applies a normative juridical method with a conceptual approach. The results of this study indicate that the implementation of deportation as a response to immigration law violations is regulated in Law Number 6 of 2011. This is a law enforcement measure to expel foreign nationals who have violated the law, as an effort to maintain state sovereignty.*

**KEYWORDS** *Deportation, Immigration, law enforcement.*



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## INTRODUCTION

Foreign nationals who engage in migration have various purposes ranging from tourism, employment to intending to settle in another country; this is also known as immigration (Arsani, 2020.). The existence of immigration activities is crucial to be regulated by a country. Indonesia, as one of the countries that receive many foreign tourists and foreign workers, has regulated the supervision of the traffic of foreign nationals who transit or reside in Indonesia in Law Number 6 of 2011 concerning Immigration (Dylan & Suryana, 2020).

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In Chapter 1 Article 1 (3) of Law Number 6 of 2011 concerning Immigration, it is stated that the function of immigration includes immigration services, national security, law enforcement, and as a facilitator of community welfare development. In carrying out the above functions, various policies supporting the functioning of these functions are issued. In terms of services for Foreign Nationals (FNs) who will enter and stay in Indonesia, a selective policy is applied.

Bali is one of the world destinations; therefore, it is important to ensure that everything runs smoothly in Bali. This means that tourism industry activities in Bali must proceed in a conducive situation. The number of FNs entering the province of Bali is higher compared to other regions, averaging 20,000-25,000 FNs entering every day. Therefore, it is necessary to establish a system that can monitor the presence of FNs in Bali (BPS, 2023).

There are two important issues raised, namely supervision of Foreign Nationals (FNs) and law enforcement regarding issues related to FNs. Moreover, Bali is one of the international tourist destinations, so it is important to ensure the existing conduciveness in Bali. The presence of FNs is indeed important for the tourism industry, but it is also important to maintain legal sovereignty. Many violations are committed by FNs, but the government has not been able to comprehensively reach them because there is no system that can detect these violations from the beginning. Legal sovereignty must still be upheld. Therefore, supervision of FNs must be enhanced, especially by immigration authorities.

Foreigners who engage in dangerous activities and are suspected of endangering public safety and order or not complying with regulations must be subjected to Administrative Immigration Actions (Wilonotomo, 2018). The most common Administrative Immigration Action is deportation, which is the forced removal of foreigners from Indonesian territory. In this case, what will be analyzed is related to deportation cases.

### **Literature Review**

Administrative Immigration Actions are administrative sanctions imposed by Immigration Officers against Foreign Nationals outside the judicial process. Foreign Nationals are individuals who are not citizens of Indonesia. Actions taken by immigration against foreigners in Indonesian territory, if they engage in activities that are dangerous or suspected to be dangerous to public safety and order, or if they do not respect or comply with applicable laws and regulations. It is important to understand the implementation of these measures. Administrative Immigration Actions, while the most common Administrative Immigration Action is deportation, which is the forced removal of foreigners from Indonesian territory.

Immigration Offices are technical implementing units that carry out Immigration Functions in district, city, or sub-district areas. The entry and exit of every person, including Foreign Nationals and Indonesian Citizens themselves, to and from Indonesian Territory mean that Immigration Law does not only regulate Foreign Nationals entering Indonesia but also Indonesian Citizens leaving Indonesian Territory. The entry and exit traffic to Indonesian Territory must pass through Immigration Checkpoints (TPI), which are the rights and authorities of a nation,

representing the sovereignty of the nation. Every person entering or leaving Indonesian territory must undergo inspection by Immigration Officers at Immigration Checkpoints.

Selective policy is a policy applied to every Foreign National entering Indonesian territory, where only Foreign Nationals who provide benefits and do not endanger public safety and order are allowed to enter and stay in Indonesian territory. Foreign Nationals entering and staying must also have clear intentions and purposes while in Indonesian territory (Widyanto & Ardyaningtyas, 2020).

Immigration Officers are employees who have undergone specialized immigration education and have technical immigration expertise and authority to carry out duties and responsibilities based on Immigration Law. Immigration Officers performing duties at borders or entry points to Indonesian territory carry out immigration supervision tasks by inspecting travel documents of both foreign nationals and Indonesian citizens, checking the validity of travel documents, checking preventive and restrictive lists, and stamping entry or exit marks on passports.

The issuance of Entry Marks is a specific mark stamped on Travel Documents of Indonesian Citizens and Foreign Nationals, both manual and electronic, given by Immigration Officers as a sign that they have entered Indonesian Territory. Travel Documents are official documents issued by authorized officials of a country, the United Nations, or other international organizations that facilitate inter-country travel and contain the identity of the holder. Whether or not a foreign national residing in Indonesian territory is related to the residence permit of a foreign national granted by immigration regulated in Law No. 6 of 2011 and has the same meaning as written in Government Regulation

Deportation is the forced removal of Foreign Nationals from Indonesian Territory. Deportation is an administrative immigration action carried out by immigration officials authorized against foreigners who are in Indonesian territory engaging in dangerous activities and suspected of endangering public safety and order or not complying with laws and regulations. In addition, deportation is also carried out because foreigners in Indonesian territory attempt to avoid threats and enforcement of punishment in their home country.

Sovereignty is considered as the protection of fundamental rights and also the interests of citizens. The concept of sovereignty itself is basically absolute or full authority over a specific territory, this is the basis for the formation of a state. Jean Bodin argues that sovereignty is the primary source in establishing law and is the highest authority in the legal hierarchy (Riyanto, 2012). Sovereignty in Indonesia itself is in the hands of the people who hold the highest power in running the state.

Sovereignty has various approaches and variations in its use. Among them can be domestic sovereignty, interdependence sovereignty, international legal sovereignty, and absolute state sovereignty. Sovereignty also has several fundamental rights in international law, namely the right to welfare, the right to jurisdiction of territory, the right to determine nationality for residents in its territory, the right to permit and refuse or prohibit people from entering and leaving its territory, the right to nationalize. Based on the definition, sovereignty is a right of a country to defend its territory from any attacks or threats that affect the performance or system of the country.

Law enforcement in the general sense is a complex process because it involves legal subjects who perceive law according to their own interests, moral factors play a significant role in determining the character of a nation's law. Laws made without moral foundations can be ensured that the goal of equitable law will not be achieved. According to the theory of legal sovereignty, the highest authority in a country lies in the law. This means that sovereignty lies with an institution or person authorized to issue orders and prohibitions that bind all its citizens.

Based on the description above, the problem formulation that can be drawn is How is the implementation of deportation according to Law Number 6 of 2011 concerning Immigration and Analysis of the case. The compilation of this journal is made to find out whether the deportation carried out is in accordance with Law Number 6 of 2011 concerning Immigration.

## **RESEARCH METHOD**

The methodological approach used in this research is a normative juridical approach. The term 'approach' refers to something (action, effort) to approach or bring closer. The juridical approach in this research is an approach from the perspective of the applicable laws and regulations (Soemitro, 1990). Meanwhile, the normative approach in this case refers to an effort to approach the researched issue with a normative legal nature. The normative approach includes legal principles, legal systematics, legal synchronization (adjustment), legal comparison, or legal history (Hadikusuma, 1995).

The specification used in this legal writing is descriptive analytical. Descriptive method is a problem-solving procedure investigated by describing or depicting the state of the research object at the present time based on visible facts or as they are.

The data analysis method used as the basis for drawing conclusions in this research is qualitative method. Legal materials compiled systematically are analyzed qualitatively so that final conclusions that can be objectively justified are drawn, which is the responsibility (Soekanto, 2006).

## **RESULT AND DISCUSSION**

### **Implementation of deportation according to Law Number 6 of 2011 on Immigration**

The definition of Deportation is the forcible removal of foreigners from the territory of Indonesia. Foreigners referred to here are individuals who are not citizens of Indonesia. Deportation is an administrative immigration action carried out by immigration officials authorized against foreigners who are in Indonesian territory and engaged in dangerous activities or reasonably suspected of endangering public security and order, or not complying with the laws and regulations. Furthermore, deportation is also carried out because the foreigner in Indonesian territory seeks to evade threats and execution of punishment in their country of origin.

The decision to deport is made by authorized immigration officials and must be done in writing and accompanied by reasons. Foreigners subject to deportation

are placed in immigration detention houses or detention rooms awaiting deportation. Immigration Detention House is a technical implementation unit carrying out immigration functions as a temporary shelter for foreigners subjected to administrative immigration actions. Meanwhile, immigration detention rooms are temporary shelters for foreigners subjected to administrative immigration actions located in the directorate general of immigration and immigration offices.

Foreigners in immigration detention houses or immigration detention rooms are called detainees, who have received detention decisions from immigration officials. Detention of foreigners is carried out until they are deported. Further provisions regarding the detention of foreigners are regulated in Article 214 of the Immigration Regulation, namely:

1. Detention of foreigners is carried out until the detainee is deported.
2. If deportation cannot be carried out, detention can be extended for a maximum period of 10 years.

The period for which a foreigner is placed in an immigration detention room is a maximum of 30 days. If the time limit is exceeded, the foreigner may be placed in an immigration detention house. If a detainee cannot be deported after more than 10 years of being detained, consideration may be given to granting them the opportunity to live as a basic human right outside detention in a certain status, taking into account behavioral aspects during detention, but still under the supervision of the Minister or designated Immigration Officer through periodic reporting obligations.

In cases where foreigners wait for more than 10 years as detainees, the Minister of Law and Human Rights or designated immigration officials oversee and endeavor to ensure that the detainee is deported. These provisions are intended to ensure that the supervision of detainee activities and presence does not have negative impacts on society. Furthermore, efforts to deport them to their country or a third country willing to accept them are still carried out (Alfarizi, 2021).

Regarding the deportation period, it should be noted that the deportation period is not explicitly regulated in the Immigration Law or Immigration Regulation. However, referring to Article 208 paragraph (1) letter d and Article 209 paragraph d of the Immigration Regulation, it is stipulated that foreigners awaiting deportation are placed in detention houses or rooms.

The waiting time in these detention houses or rooms has been set as follows:

- a. In detention rooms, a maximum of 30 days is allowed. If it exceeds this period, the foreigner who will be deported is placed in a detention house.
- b. Detention can last up to 10 years if deportation cannot be carried out.

Based on this, it means there is no explicit regulation regarding the deportation period. Instead, there is only a waiting period for foreigners before deportation in detention rooms or houses. As mentioned earlier, deportation is carried out against foreigners in Indonesian territory who engage in dangerous activities or are reasonably suspected of endangering public security and order, or not complying with the laws and regulations (Widjanarko & Cornelis, 2022).

Foreigners subjected to Administrative Immigration Actions, as regulated in Article 75 paragraphs 1 and 2 of Law No. 6 of 2011 concerning Immigration, are: Foreigners who are in Indonesian territory engaged in dangerous activities or

reasonably suspected of endangering public security and order, or not complying with the laws and regulations, and the imposition of administrative immigration actions against them.

According to Government Regulation Number 31 of 2013 Article 209, namely:

Being in Indonesian territory without a valid Residence Permit or having an expired Residence Permit; Being in Indonesian territory without valid Travel Documents; then the person must first be examined whether they violate criminal or immigration administrative articles. If they violate criminal articles, then enforcement will be through Pro-justitia and placement in a Detention Center, if they violate Immigration Administrative articles then the person can be placed in an immigration detention house; Subjected to Immigration Administrative Actions in the form of revoking Residence Permits for acts contrary to laws and regulations or disturbing public security and order; The regulations violated are not only related to immigration rules but also to rules of other institutions where the foreign national disrupts the security and public order of Indonesia.

Administrative Immigration Actions (TAK) become administrative sanctions imposed and taken by immigration officials against Foreign Nationals (WNA) outside the judicial process. This action is non-litigation, meaning it is an action that imposes sanctions outside or without going through a court decision/trial. In Article 75 paragraph 2, it regulates administrative actions that follow up immigration issues placing the deportation process at the last hierarchy. Thus, deportation is the last resort by the state to address foreign nationals who are suspected of disrupting order and endangering public safety or opposing the implementation of legal regulations (Saragih et al., 2021).

Deportation can be carried out for foreign nationals with a criminal history in their home country, in Article 75 paragraph 3 Indonesia has the authority to deport foreign nationals who are useful to continue the implementation of the law that should be in their home country. Employees working in immigration certainly have ethics or Standard Operating Procedures (SOP) in handling foreign nationals who will be deported. Deportation of foreign nationals is carried out without bias between Human Rights and national sovereignty. In enforcing these human rights, coordination between Immigration officials and foreign government representatives in Indonesia regarding their nationals who are being deported is also necessary (Arthana & Zahidi, 2022).

Waiting for deportation to be implemented; for example, if a foreign national has served a criminal penalty in prison, then the prison officer gives authority for further action to immigration officers. Then the foreign national can be placed in an immigration detention house to await the administrative deportation process until deportation is carried out.

Deportation is a forced action by immigration officials to remove or repatriate Foreign Nationals (WNA) from the territory of Indonesia because they are considered to have committed violations in the field of immigration or posed a threat to national sovereignty. Deportation of Foreign Nationals (WNA) usually occurs if the

foreign national has been a convict who has been declared free or if they have committed acts that violate immigration laws.

### **Case Analysis**

Several deportation cases against foreigners for violations committed include the following:

1. A woman and a man, who are a mother and son of Chinese nationality with initials LL (F) 54 years old and WT (M) 25 years old, were deported for violating Article 75 Paragraph (1) of Law Number 6 Year 2011 concerning Immigration. From the information provided, LL and WT were eventually sentenced to one (1) month in prison for violating immigration regulations stipulated in Article 116 Jo 71 letter (b) of Law Number 6 Year 2011 Concerning Immigration, which states, "Any Foreigner who fails to fulfill his obligations as referred to in Article 71 shall be punished with imprisonment for a maximum of 3 (three) months or a fine of up to Rp 25,000,000.00 (twenty-five million rupiah)." In accordance with Article 71 letter (b), LL and WT failed to present and submit their Travel Documents or Residence Permits to the Immigration Officer on duty for immigration supervision.
2. Singaraja Immigration deported a Polish national with initials DPL (M) after completing a criminal sentence. The foreign national was sent off via Singapore Airlines Flight Number SQ947 (Denpasar - Singapore) bound for Frankfurt, Germany, and then continued the journey by bus to Poland. The individual, an ex-convict, violated Article 33 jo. Article 49 of Indonesian Law Number 19 Year 2016 concerning Electronic Information and Transactions according to the verdict of the Amlapura District Court Number: 95/Pid.Sus/2019/PN AP with a prison sentence of 3 (three) years and 3 (three) months. The foreign national involved in the ATM skimming case entered Indonesia on August 3, 2019, using a free visa. The individual was subjected to Immigration Administrative Actions (TAK) in the form of deportation and apprehension based on Article 75 of Law Number 6 Year 2011 concerning Immigration. The foreigner engaged in activities endangering public security and order, and did not respect or comply with legal regulations.
3. Singaraja Immigration Office deported a British national with initials GTAW (M) proven to have committed theft. The individual was sent off via Thai Airways Flight Number TG-432 to Bangkok and Thai Airways Flight Number TG-910 to London, England, from Ngurah Rai International Airport. The Head of Singaraja Immigration Office (Hendra Setiawan) stated that GTAW was a former convict of theft under Article 362 of the Indonesian Penal Code according to the verdict of Denpasar District Court Number 75/Pid.B/2023/PN Dps with a prison term of 1 (one) year. The individual had completed the sentence and was transferred from Karangasem Class IIB Prison to Singaraja Immigration Office for deportation process on October 31, 2023. After fulfilling all administrative requirements, the individual was deported to return to his country via Ngurah Rai International Airport Bali

and was denied entry to Indonesian territory. This action represents tangible law enforcement.

Considering several deportation cases for various infractions, in this context, the author seeks to analyze approximately five aspects:

1) Protection of Foreigners

Law No. 6 of 2011 concerning immigration defines foreigners as individuals who are not Indonesian citizens. They are foreign nationals residing in Indonesian territory and only have specific permits to stay in Indonesia. As foreigners, they are entitled to protection from the country they visit. However, in the theory of protection for foreigners, there are two perspectives: positive and negative. The positive perspective entails the state granting rights to foreign nationals, albeit limited in nature. For instance, when a foreigner applies for a visa to visit Indonesia, the country grants it if there are no reasons to deny entry. The visa approval grants certain rights to the foreigner during their visit, but these rights are limited based on the visa's purpose. On the other hand, the negative protection means that the state does not impose specific obligations on foreigners, even though it has sovereignty. For instance, a foreigner is exempt from certain obligations imposed on citizens, such as military service. This is a form of protection for foreigners by sovereign states.

2) Status of Foreigners

The second perspective concerns the status of foreigners. When a foreigner enters Indonesia or any country, two aspects come into play: legal and social aspects. The legal aspect pertains to their citizenship status, as the laws applicable in their home country may not necessarily apply in Indonesia. Each country has its own legal regulations that must be adhered to. The social aspect involves maintaining social order, which is crucial for societal harmony. Therefore, it is the government's responsibility to clarify the legal status of foreign nationals in Indonesia to reduce rule violations or disputes in society. Respecting human dignity, the government must protect both citizens and foreigners living in Indonesia by ensuring their rights are upheld according to legal regulations (Guiliano, 2021).

3) Obligations of Foreigners

The third aspect concerns the obligations of foreigners when entering Indonesia. Foreigners must adhere to all laws of Indonesia while in the country. Therefore, when a foreigner is in Indonesia, they must comply with the country's regulations. Ignorance of the law is not an excuse, as the principle of legal fiction assumes that individuals are aware of the law when it is enacted. Hence, all individuals are expected to know the law once it is promulgated.

4) Sovereignty of the State

Next is the aspect of state sovereignty, which is obtained through considerable effort, especially by meeting the requirements of the Montevideo Convention (Prasetyo, 2023). States have specific rights and authorities in exercising their sovereignty internally, but they are also constrained by other obligations. For



example, states cannot exercise sovereignty in another country's territory or intervene in its internal affairs. Indonesia, having acquired sovereignty through hard work, has the right to exercise its internal sovereignty fully. Immigration is one tool through which the state can exercise its sovereignty, such as granting or denying entry to foreigners, ensuring public order, and resolving disputes peacefully.

#### 5) Sanctions

Regarding sanctions, there are two aspects: punitive and educative. Punitive measures serve as a form of punishment, while educative measures aim to instill values of learning and improvement in the individual. Foreigners should recognize their wrongdoing and learn from the actions taken by immigration authorities to improve their behavior in the future. Thus, immigration actions serve as both punishment and opportunities for foreigners to learn and grow.

### CONCLUSION

Administrative immigration actions are more effective and efficient in enforcing the law against violations of immigration laws because they represent the state's responsibility in protecting the rights and obligations of both citizens and foreigners. Enforcement through deportation, based on Law No. 6 of 2011 concerning Immigration, is a measure taken to uphold violations of immigration law. Deportation is an action taken to expel foreigners who violate the law in order to maintain national sovereignty. However, Article 85 of Law No. 6 of 2011 concerning Immigration does not regulate the timeframe for implementing deportation.

Deportation is the last resort for the state to address foreign nationals who are suspected of disrupting public order, endangering public safety, or violating statutory provisions. Violations of legal and social norms in society are matters that Indonesia, as a sovereign state, has the right to address through law enforcement against foreign nationals within its territorial jurisdiction. Every country will choose a sovereignty theory that aligns with its characteristics and ideology. Every sovereignty theory serves the purpose of improving the welfare of society.

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- Pasal 7 ayat (1) Undang Undang No. 8 Tahun 1981 Hukum Acara Pidana Kitab (KUHAP)  
Pasal 1 angka 1 KUHAP  
Pasal 1 angka 2 KUHAP
- Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian;  
Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja;  
Peraturan Pemerintah Nomor 31 Tahun 2013 tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian sebagaimana diubah oleh Peraturan Pemerintah Nomor 26 Tahun 2016 tentang Perubahan Atas Peraturan Pemerintah Nomor 31 Tahun 2013 tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian
- Pasal 106 angka 1 Perppu Nomor 2 Tahun 2022 tentang Cipta Kerja yang mengubah Pasal 1 angka 36 Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian  
Pasal 106 angka 1 Perppu Cipta Kerja yang mengubah Pasal 1 angka 9 UU Keimigrasian  
Pasal 71 huruf (b) Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian,  
Pasal 75 ayat (2) huruf f UU Keimigrasian  
Pasal 75 ayat (1) UU Keimigrasian

Pasal 75 ayat (3) UU Keimigrasian

Pasal 76 UU Keimigrasian

Pasal 83 ayat (1) huruf d UU Keimigrasian

Pasal 106 angka 1 Perppu 2/2022 yang mengubah Pasal 1 angka 33 UU Keimigrasian

Pasal 106 angka 1 Perppu 2/2022 yang mengubah Pasal 1 angka 34 UU Keimigrasian

Pasal 106 angka 1 Perppu 2/2022 yang mengubah Pasal 1 angka 35 UU Keimigrasian

Pasal 85 ayat (1) UU Keimigrasian

Pasal 208 ayat (2) Peraturan Pemerintah Nomor 31 Tahun 2013 tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian

Pasal 208 ayat (3) PP Keimigrasian Penjelasan Pasal 85 ayat (3) UU Keimigrasian

Pasal 85 ayat (4) UU Keimigrasian

Penjelasan Pasal 85 ayat (4) UU Keimigrasian

Pasal 52 huruf e UU Keimigrasian jo. Pasal 106 angka 6 Perppu Cipta Kerja yang mengubah Pasal 54 ayat (1) huruf b UU Keimigrasian

Pasal 116 UU Keimigrasian

Pasal 162 dan Pasal 163 ayat (1) dan (2) PP Keimigrasian

Pasal 163 ayat (3) PP Keimigrasian

Pasal 163 ayat (4) PP Keimigrasian

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