

## **Strengthening State Security Function For The State Sovereignty In Immigration Perspective (Strengthening State's Security of Immigration Function for the State Sovereignty)**

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### **ABSTRACT**

The correlation between State Security is inseparable from the state sovereignty. In its implementation, State Security is achieved through law enforcement by agencies which become state instruments according to their respective duties and tasks. State Security is part of the fourth Immigration function which has the aim of protecting State Sovereignty from foreign threats in the perspective of Immigration. The Crime Act, which at present is no longer in a small scope, it's already a matter that cannot be limited by a national boundary, or known as Transnational Organized Crime. There are a lot of crimes threatening State Security that have arisen due to threats from abroad. Therefore, the formulation of the problem examined in this paper is what are the threats to state security in the perspective of Immigration for state sovereignty. The research method used is normative legal research that is qualitative in nature and mixed thinking logic (deductive and inductive). From the results of the study it can be seen that the Immigration problem has a direct impact on State Security. So that the need for seriousness in strengthening Immigration in the function of state security for national sovereignty. The Directorate General of Immigration must be the foremost authority in State Security in order to safeguard State Sovereignty with a philosophical guardian of the nation's authoritative gate (bhumi pura wira wibawa).

**Keywords:** State Security; State Sovereignty; Transantional Organized Crime; Immigration; Directorate General of Immigration.

### **INTRODUCTION**

Along with the development of the times until now, the world is faced with the swift currents of globalization that are so fast. With the position of Indonesia's territory is so strategic for world traffic, making Indonesia unable to avoid the impact of the flow of globalization. According to the Big Indonesian Dictionary (KBBI), globalization is the process of entering the world. Globalization is a term that is related to the increasing interdependence and interdependence between nations and people around the world through trade, investment, travel, popular culture, and other forms of interaction, so that the boundaries of a country become increasingly narrow.

When a country has been integrated into the current of global development, all aspects of the country can no longer be free from the influence of economic and political forces as well as external threats (Bryant & Garnham, 2014; Circle et al., 2012; Palguta, 2019; Sabon et al., 2018). Unknowingly the country will be tied to the state of world conditions.

Various opinions show that sovereignty is something absolute that cannot be changed. However, in today's development of international relations, which are supported by globalization and communication and transportation technology, sovereignty can no longer be defended in absolute terms at conventional state boundaries along with the increasing mobility of the world's population which causes various impacts, both beneficial and detrimental to the interests and lives of the nation and state. Republic of Indonesia.

Advances in information technology and the development of transportation have implications for the depletion of a boundary between countries. This has become a principle in the international legal order, especially regarding the concept of state security in the perspective of immigration which currently cannot be judged as a trivial matter by the Indonesian people and government.

The current world geopolitical developments will greatly affect the policy and stability of a country in terms of politics, economy, social, ideology and so on. An independent state is a sovereign state that has the freedom to regulate everything in its territory, including all norms, applicable legal provisions, law enforcement that occurs for all events, events within its territory or better known in international law as the jurisdiction of a country. . The power of the state in carrying out its legal jurisdiction can be seen from events or events at state borders that are imaginary as the exclusive rights of a country. A sovereign country is a country that has the power to maintain the security of its borders from threats that come from outside. From this understanding it is realized that a state boundary is a form of state sovereignty. In maintaining the boundaries of a country, it requires thorough attention, supervision, and regulation. State borders that are on land, sea, or air are a power owned by the state.

The border area is a symbol of the sovereignty of a country. Sovereignty and jurisdiction cannot be separated because they are a unit that must be owned by a country. This means that everyone who is in an area must comply with the laws of the country that owns the territory, as there is an adage "Qui interterritorio meo est, etiam meus subditus est" which means "if someone is in my territory, then he is also subject to to me". As the requirement of a country, namely "territory", so that within the government of a country, it must have jurisdiction within the territory as previously explained, the state boundary area is a place that must be guarded, because it is a boundary where the state exercises its jurisdiction over legal subjects in order to comply with regulations. the legislation.

In the past, the problem of state sovereignty was still a tendency towards the territorial defense of the country's territory which was still limited and narrow in understanding the problem of the threat of aggression and annexation from outside through armed actions. However, in the present and in the future, the bilateral problems that occur in state security have become so complex and broad that they cover economic, political, racial, national, socio-cultural, natural environment issues, etc. It is through this national boundary that the limitation of power between sovereign states is separated from one another. Sovereignty is an absolute thing that should not be ignored, considering its role as a sign of an independent and sovereign state. A country must maintain the principle of sovereignty at borders, especially on artificial (imaginary) boundaries located at international airports, seaports, and cross-border posts, including the immigration function as the government's role in maintaining sovereignty as an independent country.

The territory of the Republic of Indonesia, which has many direct borders with other countries, is a fact that must be realized that Indonesia must always be vigilant in guarding the border areas. Possible entry of negative foreign influences (ideology and socio-culture) as well as

the possibility of transnational crimes (transnational crimes), illegal logging (illegal logging), illegal fishing (illegal fishing), human trafficking (woman and child trades/trafficking), illegal immigrants (illegal immigrants), people smuggling, narcotics trafficking, terrorist entrances, piracy, and socio-cultural conflicts that have the potential to threaten national stability must be anticipated and get attention from the government.

Immigration is often described as one of the consequences of the emergence of globalization (Boyce, 2018; Bujaki et al., 2017; Kuziemski & Misuraca, 2020). Immigration will involve many countries when it comes to security issues. Migration is a portrait of a mass movement where the majority of the perpetrators are the poor, who are moving towards rich countries. Some migration cases don't have a bad impact on anything, but there are also many migration cases that have a bad impact on security; as in cases of trafficking in persons, exploitation and modern slavery which must be taken seriously. The tragedy that women who are victims of trafficking in persons end up in prostitution circles or refugees who are forced out of their homelands is a fact that can be seen in documents well summarized by institutions such as the International Organization for Migration (IOM) and the Organization for Economic Cooperation and Development. Development (OECD). Documents from these institutions show that migration generally occurs from poor countries to countries that are richer than their own (IOM's World Migration Report, 2002, 2003).

In the Indonesian constitution, in accordance with Law Number 6 of 2011 it is explained that Immigration is a matter of traffic of people entering or leaving the Indonesian Territory and its supervision in order to maintain the upholding of state sovereignty. Therefore, it can be understood that Immigration is part of the realization of the implementation of the enforcement of sovereignty over the Indonesian Territory in order to maintain order in the life of the nation and state towards a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. To achieve this, regulations Immigration is made by the government in such a way as to achieve the state's goal of protecting national interests, maintaining security and state sovereignty from things that can have a detrimental impact on the nation and state as a result of crossing foreigners entering and leaving the territory. Indonesia. In order to maintain the integrity of the state.

To achieve this, immigration regulations are made by the government in such a way as to achieve the state's goal of protecting national interests, maintaining security and state sovereignty from things that can have a detrimental impact on the nation and state as a result of crossing foreigners entering and entering the country. outside of and into the territory of Indonesia. In order to maintain the integrity of the state. Indonesian citizens and foreign nationals who leave, enter and stay in the territory of Indonesia, must comply with the regulations that apply in Indonesia, one of which is in the field of Immigration.

## **METHOD**

This type of research uses a normative-empirical approach. What is meant by normative legal research is research that uses an approach based on the main raw materials, examining theoretical matters concerning legal principles, legal conceptions, views and doctrines. laws, regulations and legal systems by using secondary data, including: principles, rules, norms and legal rules contained in laws and regulations and other regulations, by studying books, legislation

and other documents closely related to research (Creswell, 1999; Creswell & Clark, 2017; Creswell & Creswell, 2017; John W Creswell, 2013).

The type of approach used is a qualitative normative legal research. The point is research that describes, explains, analyzes, and develops the legal construction of state sovereignty in the perspective of immigration (Setijaningrum, 2009).

As a norm, this study aims to determine the normative objectives and threats to state security in crime from an immigration perspective as well as the implementation of immigration control and law enforcement as a form of safeguarding state sovereignty. As a matter of fact, this research intends to analyze and evaluate how the function and role of state security in the perspective of immigration, as well as its supervision and law enforcement on current problems .

The collection of legal materials is carried out by identifying and taking an inventory of laws and regulations, researching library materials (writings and scientific works), and other sources of legal materials that are relevant to the legal issues in this research. The research data analysis technique used is qualitative research with an inductive descriptive approach, is a research procedure that produces descriptive data in the form of written and oral words from the research and the behavior of the object of research that is observed with the aim of making a systematic description, picture or painting. , factual, accurate about the factors, properties and relationships between the phenomena investigated.

As stated by (Creswell & Clark, 2017)states that "Qualitative research (qualitative research) is a study aimed at describing and analyzing phenomena, events, social activities, attitudes, beliefs, perceptions, thoughts of people individually and in groups."

Data analysis in this study was carried out on qualitative data, namely data analysis by analyzing, interpreting, drawing conclusions according to the problems discussed, secondary data research will be studied which is then described in the form of sentences arranged systematically.

## **RESULT AND DISCUSSION**

### **The Nature of Immigration**

In various literatures, the concept of immigration is now in the spotlight in line with various changes that occur in local, national and global contexts. At the global level, historical changes have existed since humans were on earth. As a matter of fact, humans have the desire to move from one place to another, one of which is in terms of fulfilling the need for temporary or permanent residence. This is what triggers the occurrence of an event Human migration into the concept of Immigration.

The presence of globalization has made it easier for everyone to travel from one country to another. The freedom of human movement to move between countries is a basic or human right guaranteed in the constitution. This right to migrate is regulated in Article 28E of the 1945 Constitution (Amendment), which stipulates that: "Every citizen is free to choose a place to live in the territory of the country and leave it, and has the right to return." (Edo, 2019; Joppke, 2010) Juridically, Article 1 Number (1) of Law Number 6 of 2011 concerning Immigration (hereinafter referred to as Law No. 6 of 2011) confirms as follows: " Immigration is a matter of traffic of people entering or leaving the Territory. Indonesia and its supervision in the context of maintaining the upholding of state sovereignty". Article 1 Number (3) states that the Four Immigration Function, namely: (i) community service, (ii) law enforcement, (ii) state security,

(iv) development of community welfare, Immigration has an important role in the function of State Security in maintaining state sovereignty. In Article 8 of Law no. 6 of 2011 explains that everyone who enters or leaves the Indonesian Territory must have a travel document, which is an official document issued by an authorized official from a country that contains the identity of the holder and is valid for traveling between countries. Without having a valid and valid travel document (passport), no one can be allowed to enter or leave the Indonesian Territory. One of the many legal provisions in Law no. 6 of 2011 which is the "typical Immigration rule" of course Article 75 Paragraph (1) of Law No. 6 of 2011. The article states that: "Immigration officials are authorized to carry out Immigration Administrative Actions against Foreigners who are in the Indonesian Territory who carry out dangerous and appropriate activities. suspected of endangering security and public order or not respecting or disobeying the laws and regulations. Whether we realize it or not, this article is a legal rule that forms the basis for every Immigration Officer to be able to optimally guard and guard the country's gates from every threat of foreigners who want to enter Indonesian territory. Based on this article, each Immigration Officer can take administrative actions in the form of inclusion in the list of prevention or deterrence, restrictions, changes, or cancellations of Stay Permits, imposition of fees, even deportation from Indonesian territory (vide Article 75 paragraph 2 of Law No. 6 of 2011 ). The Immigration Officer who carries out the said administrative action, may rely solely on the "alleged" clause, or assume that the foreigner has no benefit (principle of benefit) for the Indonesian state, based on the principle of selective policy (selective policy principle). So in this case the presumption of innocence principle does not apply, as understood in the Criminal Procedure Code. This is different if we equate it with the *pro justitia* (law enforcement) process in the field of criminal law which must be based on two valid pieces of evidence and the judge's conviction (Article 183 of the Criminal Procedure Code). This is where the exclusive rights (privilege rights) of each Immigration Officer are not owned by law enforcers in other agencies. A special article which is the embodiment of state sovereignty.

### **Immigration Supervision in the State Security function**

Immigration Indonesia has 4 immigration functions which are described in the Act. No. 6 of 2011 article 1 paragraph 3. Among its functions are law enforcement and state security. In response to this, it is the immigration control function that is obliged to carry out this. In this case, the target of supervision is foreigners, starting from the time foreigners apply for visas at Indonesian embassies abroad and who are in the territory of the State of Indonesia as well as foreigners suspected of committing immigration irregularities or violations. Every foreigner who enters or leaves the Indonesian legal territory is required to provide identity, arrival or departure information and other necessary information to the Immigration Officer at the Immigration Checkpoint.

### **Immigration Law Enforcement Action**

Immigration law is part of the substance of State Administrative Law which has the function of administering state administration or administering government administration (Iman Santoso, 2004: p. 1). Supervision of foreigners in the territory of Indonesia in the form of supervision of foreigners entering, being, and leaving the territory of Indonesia. When a foreigner

is in the territory of Indonesia, the foreigner can give rise to 2 (two) possibilities, namely: First, the foreigner who obeys the applicable regulations and does not carry out activities that are dangerous to security and public order, this does not cause immigration problems or statehood. Second, Foreigners who do not comply with the laws and regulations in Indonesia, this creates problems and may be subject to legal action in the form of 11 1. Criminal law actions in the form of immigration investigations which are part of the criminal justice system (trial, prosecution, investigation) and or 2. Actions State administrative law in the form of immigration action is an administrative action in the field of immigration outside the judicial process. Included in this immigration act are the deportation of foreigners to leave the territory of the Republic of Indonesia.

### **Immigration Crime**

Talking about travel documents, of course, we are reminded of passports or documents used to cross the borders of other countries. The word passport actually comes from the words "Pass" which means permission and "Port" which means port. Passport is issued by the competent office in the field of immigration in a country.

The definition of passport as regulated in Article 1 paragraph 16 of Law Number 6 of 2011 concerning Immigration states that "Passport of the Republic of Indonesia, hereinafter referred to as Passport, is a document issued by the government of the Republic of Indonesia to citizens to travel between countries valid for a certain period of time." This understanding also implies that the passport belongs to the state which is further reaffirmed in the writing on the passport, namely "This passport is a document belonging to the state". meaning of the principles of international law regarding the sovereignty of a state. An interesting fact about passports is that ordinary people often underestimate the function and role of the immigration process in obtaining a passport or using it to traverse a country's territory.

In accordance with its understanding that a travel document is an official document issued by the competent authority of a country, the United Nations, or other international organizations to travel between countries containing the identity of the holder. So the main functions of travel documents are: a. As a document to travel between countries b. As a document containing the identity of the holder including name, place of birth, gender, citizenship, and so on.

The occurrence of immigration crimes such as making and falsifying travel documents which are official documents that should be legally issued by authorized officials from a country because it contains the identity of the holder and applies to travel between countries, requires law enforcement efforts including supervision of people entering or entering the country. outside the territory of the Republic of Indonesia and supervision of foreigners in the territory of the Republic of Indonesia.

The existence of immigration documents can be made, stored, falsified and misused for the benefit of oneself and others, and can even be used to facilitate the occurrence of criminal acts such as; terrorism, corruption, trafficking in persons, narcotics and psychotropic substances, timber smuggling and people smuggling and other criminal acts. The definition of a Travel Document is an official document issued by the competent authority of a country, the United Nations, or other international organizations to travel between countries containing the identity of the holder.

### **Threat of Transboundary Crime on State Security in Immigration Perspective**

The rapid emergence of globalization in the economic, political, social, cultural and security fields has led to the emergence of issues of non-traditional threats to the existence of a state's security. At the national and local levels, the urgency of state security is marked by many communal conflicts and other parochial ties. And the increasing threat to public security that affects the welfare of the community such as the Crime of Trafficking in Persons (TTPO), People Smuggling, Illegal Immigrant Workers, and others, which of course has a negative impact on the national and global life.

Likewise, the actors involved in security are no longer only focused on state actors but now also need to pay attention to the role of non-state actors, such as transnational crime organizations and terrorist groups. Even today, humans are witnessing the emergence of transnational actors and non-state actors with global action capacities.

Therefore, for Farouk Muhammad, a threat to the security of the State is not necessarily a disturbance to the security of humans, groups, or society. Ex - The Minister of Defense Juwono Soedarsono since 2004 has been directed to produce a new national security system design capable of dealing with various typologies of problems and threats, both conventional and non-traditional security threats. Globalization and democratization that hit the world affect and color the policy and security map of each country where each country has interdependence with one another.

A security expert, Barry Buzan divides the security sector into five areas; military, political, environmental, economic and social. The military approach means only one of them in the national security system. The role of the military focuses on the capabilities of defense institutions, threat assessment and others. Socio-cultural and religious relations are needed to understand the dynamics of threats and the interaction of security factors.

The United Nations Convention on Transnational Organized Crime (UNTOC) which Indonesia has ratified with Law Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime (United Nations Convention Against Organized Transnational Crime) mentions a number of crimes that fall into the category of transnational organized crime, namely money laundering, corruption, illicit trade in protected wild plants and animals, crimes against cultural property, human trafficking, migrant smuggling, and the production and illicit trade of firearms. The Convention also recognizes the close relationship between transnational organized crime and the crime of radicalism and terrorism, although the characteristics are very different. Although the crimes of illicit drug trafficking and cybercrime are not referred to in the convention, these crimes are categorized as transnational organized crimes. The United Nations Convention Against Transnational Organized Crime states that a crime is transnational if it is committed in more than one country; is carried out in one country but a significant part of the preparation, planning, directing or control activities takes place in another; committed in one country but involves an organized criminal group engaged in criminal activity in more than one country; or is committed in one country but has a major effect in another.

Negative impacts can be in the form of disturbances or threats, namely, among others, an increase in organized transnational crime, smuggling (illegal fishing, women trafficking), natural wealth theft, patent theft, money laundering, fish theft, cyber crime, document falsification and drug trafficking and so on.

Transnational crime is a crime that poses a serious threat to every country. This crime is

regulated in the United Nations Convention on Transnational Organized Crime (UNTOC) which was agreed in 2000.

### **Problems and Other Threats to State Security in Immigration Perspective**

Mixed marriage fraud is an act of legal smuggling carried out to obtain benefits from marital status with a partner who is an Indonesian citizen or a foreigner holding a residence permit. Pseudo-mixed marriages are mixed marriages with deviations from the goals and principles of the true nature of marriage with the aim of, among others, obtaining citizenship, obtaining HAT, financial benefits, prestige, and others.

This form of marital irregularity, known as pseudo-marriage, is a marriage deviation carried out to obtain Indonesian citizenship easily and cheaply, especially by a foreign citizen, without having to go through ordinary naturalization. Another goal is also to get an Immigration Stay Permit easily without having to meet the requirements and conditions that should be in getting an Immigration Stay Permit. Pseudo-mixed marriages are carried out in three stages, namely the implementation of marriage, the acquisition of civil rights due to pseudo-mixed marriages and divorce. Pseudo-mixed marriages break up after the purpose of pseudo-mixed marriages is achieved. So that the incident of pseudo-mixed marriage is a business act in legal smuggling (Edo, 2019; von Werthern et al., 2018).

The challenge that occurs in the effort to prevent pseudo-mixed marriages is that pseudo-mixed marriages are carried out legally according to Indonesian marriage law as regulated in Law Number 1 of 1974 concerning Marriage. However, the purpose of this pseudo-mixed marriage has a hidden purpose with an agreement between the two parties beyond the purpose and principle of the nature of marriage. Pseudo-mixed marriages can be annulled. Regarding the civil consequences of pseudo-mixed marriages, it can be abolished without questioning the cancellation of the marriage itself (Chacón, 2012; Eberl et al., 2018).

Immigration criminal acts carried out with the application of Article 135 of Law Number 6 of 2011 concerning Immigration, namely every person who performs pseudo-marriage with the aim of obtaining Immigration Documents and/or to obtain citizenship status of the Republic of Indonesia shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

In the explanation of the article, it is explained that pseudo marriage is the marriage of an Indonesian citizen or a foreigner holding a Stay Permit with another foreigner and the marriage is not a real marriage, but with the intention of obtaining a residence permit or Travel Document of the Republic of Indonesia. From a legal perspective, marriage is a form of legal smuggling.

### **CONCLUSION**

The increasingly complex problems faced by countries in the world today make the traffic of people visiting out and into the country increasingly rapid, so Immigration as an agency or institution that has the authority to regulate and supervise foreigners in the territory of Indonesia must act in a straightforward manner in accordance with Immigration has a very important role in maintaining state sovereignty from threats arising from the negative impact of human traffic



movements between countries and the activities of foreigners within the Indonesian state. However, the implementation of the state security function, especially in the field of immigration, is still lacking in attention and has not been the focus of strengthening state sovereignty. Whereas Immigration is the front line in state security from threats that come from human traffic activities.

The jurisdiction of the Republic of Indonesia is so wide that the immigration function is not protected enough at this time. With a very minimal number of human resources and facilities, it is not surprising that Indonesia has not become a sovereign country over the security of the borders of state sovereignty.

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