

CRIMINAL SYSTEM DISPARITY IN THE INDONESIAN IMMIGRATION LAW 2011

Dista Dewi Rahayu¹, Ridwan Arifin², Luby Lukman Zakaria¹

¹Magister of Law, University of Balikpapan, Balikpapan, Indonesia

²Department of Strategic and Global Studies, University of Indonesia, Jakarta Indonesia

Email: dista.dewi@gmail.com

Submitted: 27-12-2022; Accepted: 27-03-2023

DOI: <http://dx.doi.org/10.30641/kebijakan.2023.V17.25-40>

ABSTRACT

The Criminal Provisions in Indonesian Immigration Law of 2011 are designed as acts of legislation for preventing transnational organized crimes in Indonesia. This law has existed for more than 10 years and has been no critical evaluation of the immigration criminal provisions. The construction of the criminal system has a non-uniform pattern of penal policy formation. This research employed the doctrinal research method with deductive reasoning that analyzed Articles on immigration criminal provisions from the perspective of Jeremy Bentham's theory of punishment analyzing the quality of criminal Articles. The results indicate that there are reactive and not pre-empting immigration criminal provisions, poor criminal provisions during immigration examinations, disparities in Judge's decisions at courts, varied patterns of punishment and sanctions, and inconsistency of criminal liability arrangements against corporations. Reconstruction of immigration criminal Articles is urged to achieve Bentham's principles and objectives of the law in sentencing. Criminal Articles should be dominated to prevent cross-border crimes during immigration clearance.

Keywords: Criminal Disparity; Immigration Law; Criminal Provision

1. INTRODUCTION

The number of human mobility within the global migration framework from one country to another has increased yearly. In 2010 the number of people's movement was 51 million people. Meanwhile, in 2019, this figure had increased by 272 million people.¹ The trend of mobility of foreign nationals across the Indonesia's territory was recorded as 7 million people in 2011 and it increased to 11.69 million people in 2019.² The movement of people between countries is caused by various reasons, including the desire to seek a better life and advanced development in information, transportation, and technology. However, this phenomenon is inseparable from the problem of illegal migration and organized transnational crime (TOC), such as people smuggling and human trafficking.³ In practice, regulations governing the mobility of people entering and leaving Indonesia's territory refer to the Indonesian Immigration Law Number 6 of 2011, replacing the old Immigration Law Number 9 of 1992. The Indonesian Immigration Law of 2011 is expected to prevent and overcome transnational crimes and protect human rights.⁴ In particular, the Criminal Provisions in Indonesian Immigration Law of 2011 are designed as the act of legislation for preventing transnational organized crimes in Indonesia.

1 United Nations, "Global Issues Migration," accessed May 17, 2022, <https://www.un.org/en/global-issues/migration>.

2 Badan Pusat Statistik, "Warga RI Melancong Ke Luar Negeri Turun 75% Imbas Pandemi," accessed May 19, 2022, <https://databoks.katadata.co.id/datapublish/2021/12/29/warga-ri-melancong-ke-luar-negeri-turun-75-imbaspandemi>.

3 Anugerah Rizki Akbari, "Explaining Crimmigration in Indonesia: A Discourse of the Fight Against People Smuggling, Irregular Migration Control, and Symbolic Criminalization," *Indonesia Law Review* 5, no. 3 (December 31, 2015), <https://doi.org/10.15742/ilrev.v5n3.163>.

4 Badan Pembinaan Hukum Nasional, "Laporan Akhir Analisis Dan Evaluasi Hukum Terkait Keimigrasian," 2020, 32, https://bphn.go.id/data/documents/ae_2_buku_pokja_keimigrasian.pdf.

The Indonesian Immigration Law Number 6 of 2011 is included in the special criminal law as an administrative legislation that contains criminal sanctions.⁵ In law enforcement, the law has considerable measures in the form of Immigration Administrative Sanctions (TAK) and criminal charges as regulated in the Criminal Provisions Chapter. The purposes of imposing criminal sanctions in administrative laws and regulations promote the law and order in community, and enhance administrative sanctions because, in essence, criminal charges are imposed when administrative sanctions are not considered effective. However, the Indonesian government believes that criminal charge is more effective in dealing with migration and border control issues rather than restructuring management and technology.⁶

Problems arise when the Criminal Provisions Chapter in Indonesian Immigration Law Number 6 of 2011 does not have uniformity in preparing penal policies.⁷ There are four patterns of selecting criminal sanctions in law: single formulation, cumulative formulation, alternative formulation, and alternative/cumulative formulation. The sanctions in the Immigration Criminal Provisions Chapter are diverse.⁸ For example, Article 133 letter (a) of Indonesian Immigration Law Number 6 of 2011 provides a single sanction, like imprisonment for an Immigration Officer or other official who allows someone to commit an Immigration violation, as listed in Article 135. In contrast to Article 135, which provides cumulative criminal charges in imprisonment and fines for any person found guilty of sham marriages, alternative formulations are found in Articles 116, 117, and 124 letters (b). The alternative/cumulative formulation is also found in Article 130, which states that a person who deliberately and unlawfully holds a travel document of someone else shall be imposed with the imprisonment and/or a fine.⁹

Discrepancies in the pattern of formulation of most and less serious criminal charges are also found in the articles of the Criminal Provisions in Indonesian Immigration Law Number 6 of 2011. Some of the articles are determined by a special maximum pattern; for example, in Article 132, a special minimum pattern determines some others, and a special maximum is written in Article 120 section (1).¹⁰ Different sentencing systems can potentially cause criminal disparities.¹¹ Criminal disparity (disparity in sentencing) is the result of disproportionate punishment for the same action or acts of equivalent gravity that have no obvious explanation. Criminal disparities may occur in the punishment of a person who commits an offense together (co-defendants).¹² Apart from the regulation itself, criminal disparities may happen in convictions by a judge because the principle of the freedom of the Judge can lead to deciding the sentences in the court of law.¹³

Harkristuti Harkrisnowo argues that criminal disparities are categorized into four types: disparities between crimes of the same nature, differences in convictions by judges or jury, disparities between offenses of the same scale of severity, and variations in convictions of different panels of judges for the same crime.¹⁴ The disparity in criminal decisions occurred in 2014 when the Kalianda District Court in Convictions Number: 510/Pid.B/Sus/2014/PN.KLD acquitted the defendant, who was charged with people smuggling cases. In response to this contested judgment, the Public Prosecutor filed an appeal to the Supreme Court. As a result, the Supreme Court Judge granted the appeal of cassation so that the defendant was proven to be guilty and imposed on four years in prison and a penalty IDR 500,000,000 or five hundred million Rupiah.¹⁵

-
- 5 Bayu Dwi Anggono, Agus Riewanto, and Oce Madril, *Hukum Keimigrasian: Suatu Pengantar*, ed. Jimmy Usfunan, 1st ed. (Depok: PT Raja Grafindo Persada, 2022), 191.
 - 6 Anggono, Riewanto, and Madril, 219.
 - 7 Anggono, Riewanto, and Madril, 209.
 - 8 Anggono, Riewanto, and Madril, 209–2010.
 - 9 “Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian” (2011).
 - 10 Anggono, Riewanto, and Madril, *Hukum Keimigrasian: Suatu Pengantar*, 212.
 - 11 Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana*, 4th ed. (Bandung: PT Alumni, 2010), 52.
 - 12 Muladi and Arief, 52–53.
 - 13 Muladi and Arief, 56.
 - 14 Nimerodi Gulö and Ade Kurniawan Muharram, “Disparitas Dalam Penjatuhan Pidana,” *Jilid 47*, no. 3 (2018): 215–27.
 - 15 Cherly Dwi Cahya Herwanto, “Dibaikannya Alat Bukti Dan Fakta Hukum Oleh Judex Facti Yang Terungkap Di Persidangan Perkara Keimigrasian Sebagai Upaya Kasasi Penuntut Umum (Studi Putusan Mahkamah Agung Nomor 96 K/Pid.Sus/2015)” 8, no. 1 (n.d.).

The aforementioned phenomenon indicates a construction of articles in the Criminal Provisions Chapter that denotes legal uncertainty in society. There will be potential disparities in crime that tend to abuse authority. The construction of the criminal system has a non-uniform pattern of penal policy formation. However, there has been very few studies which discuss and evaluate the Criminal Provisions of the Indonesian Immigration Law of 2011, some of which were the Analysis and Evaluation of Indonesian Immigration Law by BPHN in 2020,¹⁶ the analysis of criminal charges for immigration law offenders,¹⁷ and the reformulation of criminal charges in Indonesian Immigration Law of Article 116 related to Article 71 letter B. Those previous studies have limited to the discussions focusing on comprehensive evaluations of criminal charges in Indonesian Immigration Law 2011 and having insufficient analysis on criminal disparity, sentencing patterns, and corporate crime.¹⁸ Also, this law has existed for more than 10 years and has been no critical evaluation of the immigration criminal provisions. As such, to fill the gaps, this research examined how the construction of the articles in the Chapter on Immigration Criminal Provisions in Indonesian Immigration Law Number 6 of 2011 was analysed from the perspective of Jeremy Bentham's criminal theory, criminal charges, sentencing patterns which leads to criminal disparities.

This study aimed to describe and examine the Immigration Criminal Provisions in Indonesian Immigration Law Number 6 of 2011, which was explored in the framework of the values of justice and legal principles contained in such law, as well as to examine the potential disparities in sentencing in the context of immigration criminal provisions. Therefore, this study addressed a research question as to how the construction of Criminal Provisions in the Indonesian Immigration Law is designed from the perspective of Bentham's principles in law, elements of justice, criminal disparity, sentencing patterns, principle of strict liability, criminal charges, and corporate crime. This study contributed to providing references for evaluating legal policies related to human migration and national borders and as a foundation for the construction of immigration criminal laws for foreign nationals and Indonesian citizens in the legislation of the Indonesian Immigration bill.

2. METHOD

This study employed a normative or doctrinal approach to discuss provisions in Articles of Criminal Provisions in Indonesian Immigration Law Number 6 of 2011.¹⁹ The research framework in this study applied a theoretical framework with the theories and concepts of classical scholarship from Jeremy Bentham. This method was selected to assess the quality and construction of immigration criminal provisions. Deductive reasoning is designed to direct research from general research to specific data collection.²⁰

After determining the issues to be analyzed, this study set out the classical view and theory from Jeremy Bentham to refer to the main components in the form of definitions, concepts, and relationships between concepts. The next step was to employ internal and external frameworks to analyze the relationship between

16 Badan Pembinaan Hukum Nasional, "Laporan Akhir Analisis Dan Evaluasi Hukum Terkait Keimigrasian," 86.

17 Ridel Parengkuan, "Pemberlakuan Sanksi Pidana Terhadap Pelaku Tindak Pidana Keimigrasian," *Lex Crimen* IV, no. 1 (2015): 71–78.

18 Fatwa Zein, M. Alvi Syahrin, and Tony Mirwanto, "Reformulasi Sanksi Pidana Pasal 116 Juncto Pasal 71 Huruf B Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian," *Jurnal Ilmiah Kajian Keimigrasian* 5, no. 1 (2022): 97–118, <https://doi.org/10.52617/jikk.v5i1.326>.

19 Sanne Taekema, "Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice," *Law and Method*, March 9, 2018, 1, <https://doi.org/10.5553/rem/.000031>.

20 Sitwala Imenda, "Is There a Conceptual Difference between Theoretical and Conceptual Frameworks?," *Journal of Social Sciences* 38, no. 2 (February 2014): 185–95, <https://doi.org/10.1080/09718923.2014.11893249>. or they refer to different constructs. Although, generally, a lot of literature uses these two terms interchangeably – suggesting that they are conceptually equivalent, the researcher argues that these are two different constructs – both by definition and as actualised during the research process. Thus, in this paper, the researcher starts by developing his argument by examining the role of theory in research, and then draws a distinction between areas of research that typically follow deductive versus inductive approaches, with regard to both the review of literature and data collection. The researcher then subsequently argues that whereas a deductive approach to literature review typically makes use of theories and theoretical frameworks, the inductive approach tends to lead to the development of a conceptual framework – which may take the form of a (conceptual

Jeremy Bentham's concept and the immigration criminal provisions concept in Indonesian Immigration Law Number 6 of 2011.²¹ After employing it, the internal and external frameworks were engaged into analysing the relationship between Jeremy Bentham's concept and the immigration criminal provisions concept in Indonesian Immigration Law Number 6 of 2011. The final step was to provide criticism and draw conclusions from the analysis. This study used secondary data consisting of primary sources and secondary sources. The primary sources included Indonesian Immigration Law Number 6 of 2011, Law Number 1 of 1946 about Indonesian Criminal Law, and online news on the website, while the secondary sources consisted of published scientific articles, books, court decisions or convictions, and performance reports of the Directorate General of Immigration.²²

3. FINDINGS AND DISCUSSION

Elements of Prevention in Immigration Criminal Provisions

Classical philosophy by Jeremy Bentham was employed as a guide in investigating the problems in this study. Bentham's work has an essential influence on criminal law reforms, for instance, his theory of felicific calculus. This theory states that humans are created beings who rationally and consciously choose pleasure and avoid pain. Therefore, a punishment must be determined in such a way as to cause a feeling of distress that is greater than pleasure as a result of the crime committed.²³ This theory is a development of previous philosophical ideas by Cesar Beccaria about "let the punishment fit the crime" which implies that punishment must be designed for each crime according to its level, which will produce more distress than pleasure for those who commit acts.²⁴ Jeremy Bentham, with the principle of utilitarianism, explains that an action is not judged by absolute matters like irrational justice or truth, but it is judged by a system that can be contested as the greatest happiness for the greatest number. Bentham argued that the purpose of crime in law is to prevent all criminal acts, violations or offenses, even the most serious crimes or violations or worst offenses before they occur, and to try to reduce all costs incurred by the criminal acts. Criminal law is used to prevent crimes from happening in society, not as retaliation against crime offenders.²⁵

Indonesian Immigration Law Number 6 of 2011 was constructed to deal with the increasing trend of Transnational Organized Crime (TOC) because of international developments and global uncertainty. In the Explanation chapter of such law, the implementation of criminal charges applied to foreign nationals for entry and stay in Indonesia has not reflected pre-empting measures and effects which discourage people from committing crimes, so this immigration law is constructed with more serious criminal charges than in previous laws. Apart from that, such Explanation Chapter of the law also explains that the rules and charges are anticipatory and precautionary towards problems in the future. These two points may confirm the criminal objectives in the utilitarianism principle of Jeremy Bentham, in which a punishment can be justified if the consequence of punishment is to prevent recurring crimes by criminals in the future. However, increasing the level of seriousness in criminal charges in Indonesian immigration law has not entirely reduced the high rate of violations in migration and border control.

In 2020, the Directorate General of Immigration (DGI) targeted two percent of immigration law enforcement, but in practice, there was an increase of 66.58 percent in immigration law enforcement or an increase of 3,329 percent in performance achievements.²⁶ In addition, the Soekarno-Hatta Immigration Office in 2020 set a target of Immigration Administration Measures (TAK) to 71 foreign nationals in Indonesia and 4 cases to face in the court of law, but in facts, there were 153 people subjected to TAK and 9 cases before the

21 Taekema, "Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice," 7.

22 Julius Manu, Emmanuel ; Akotia, *Secondary Research Methods in the Built Environment*, 1st Editio (London: Routledge, 2021), 14, <https://doi.org/https://doi.org/10.1201/9781003000532>.

23 Muladi and Arief, *Teori-Teori Dan Kebijakan Pidana*, 30.

24 Muladi and Arief, 28.

25 Muladi and Arief, 30–31.

26 Directorate General of Immigration, "Laporan Kinerja Direktorat Jenderal Imigrasi Tahun Anggaran 2021" (Jakarta, 2021), 66.

court of law.²⁷ In this sense, it shows an extensive potential misusing free-visa policy as they work illegally without a work permit: IMTA and RPTKA.²⁸ These conditions indicate that increasing the criminal charges in the Indonesian immigration law may not effectively reduce the number of immigration law violations and crimes in which they have not reached the objective of prevention in law, according to Jeremy Bentham's theory.

Immigration criminal provisions are regulated from Article 113 to Article 136 in Indonesian Immigration Law Number 6 of 2011. These articles impose criminal charges on individuals who violate the provisions on immigration crimes, including every person, transport operator, foreign national, sponsor, accommodation owner or manager, immigration officer or other officials, detainee, corporation manager, and corporation. Of the 24 articles of immigration criminal provisions, 5 articles, such as Articles 113, 114, 119 section (1) and 121, write provisions about criminal acts or violations that occur at immigration border controls (TPI) for every person entering and leaving Indonesia's territory illegally. These criminal provisions reveal that there is a prevention of crime before foreign nationals enter Indonesia's territory. There are 19 articles concerning immigration criminal provisions for individuals who violate the Indonesian Immigration Law while they are staying in Indonesia's territory.

The provisions on immigration crime in Indonesian Immigration Law reflect that the purpose of punishment in law, according to Bentham, has not been incorporated because it lacks articles that regulate the prevention of criminal acts that occur before someone or foreign nationals enter Indonesia's territory. These criminal provisions are inadequate in regulating criminal acts in the border area or border controls when an individual or foreign nationals arrives in Indonesia and leave the Indonesia's territory. As such, the articles on immigration criminal provisions are dominated by crimes that have occurred inside Indonesia's territory. TPI must refer to Indonesia's selective immigration policies, notably preventing cross-border crimes or granting international travellers visa-free facilities.²⁹ This means the national and border security during an immigration clearance process at TPI is not focusing on a preventive, selective, and proactive approach since a series of criminal acts are more likely to happen when international travellers cross the border of Indonesia's territory.

The articles on immigration crimes in Indonesian Immigration Law have not governed strict criminal acts at TPI. Such criminal provisions have not governed articles about someone using other people's travel documents or impostors, providing false information or data during an immigration clearance process, physical or verbal attacks to immigration officers, taking pictures or photos or videos of immigration officers and areas without consents, illegal ship route deviations, stowaway, in possession of two passports (Indonesian passports and foreign passports) at the same time by Indonesian citizens who are not dual citizenship subjects, and some violations that occur during immigration clearance process at border crossing stations (PLBN). In addition, the Indonesian Immigration Law has not regulated immigration criminal provisions about an individual committing violations or criminal acts who misuse information systems, automated border machine hacking, as well as breaching immigration data, electronic entry stamps, and biometric data.³⁰

In Indonesian Immigration Law, Article 114 Section (2) has mentioned criminal charges for transport operators that those who embark and disembark passengers outside of the TPI will be imposed maximum 2 years of an imprisonment and liable to a maximum penalty of two hundred million rupiah or IDR 200,000,000. This article on immigration criminal provisions has shown preventive measures on passengers upon entry or exit of Indonesia's jurisdictions, but it has not regulated measures for crews of the transports (active crew) of

-
- 27 Kantor Imigrasi Kelas I Khusus TPI Soekarno Hatta, "Berkas Laporan Akuntabilitas Kinerja Instansi Pemerintah (LAKIP) Kantor Imigrasi Kelas I Khusus TPI Soekarno-Hatta Tahun 2020," 2020, 1.
- 28 W. & Afrizal, R.A. Setiadi, "Implikasi Kebijakan Bebas Visa Berdasarkan Peraturan Presiden Tentang Bebas Visa Kunjungan: Perspektif Ketenagakerjaan," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 3 (2019): 311–22, <https://ejournal.balitbangham.go.id/index.php/kebijakan/article/view/790>.
- 29 N. L. Santosa, A. A. G. D. H. ; Wijaya, I.M.M. ; Sundariwati, "Principles of Selective Immigration Policy in Relation to Visa Free Entry for Tourism Purposes," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 2 (2022): 235–52, <https://ejournal.balitbangham.go.id/index.php/kebijakan/article/view/2596/pdf>.
- 30 Ridwan Pramana, G. M. A. ; Nurkumalawati, Intan ; Arifin, "Policy Evaluation on Immigration Electronic Stamp, Biometric Data, and Autogate Machines in the Context of Geopolitics," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 1 (2022): 41–60, <https://ejournal.balitbangham.go.id/index.php/kebijakan/article/view/2160/pdf>.

shipping agencies and airlines including ground staff. In this case, this provision prevents ground staff from making mistakes in dropping off passengers on international route flights that land at the domestic terminal at Indonesia's airports, and passengers do not go through immigration clearance at international arrival terminal buildings. Some such cases have occurred in Indonesia; for instance, in 2016, an Airasia plane from Singapore landed at Bali's Ngurah Rai International Airport, but the ground staff dropped the passenger off at the domestic terminal.³¹

Elements of Justice in Immigration Criminal Provisions

In addition to the function of prevention, punishment also aims to create justice that can be contested. For instance, criminal disparities occurred in 2012 by the Judges at three District Courts of Pandeglang, Central Jakarta, and Cilacap. In this case, the Judge reached a different conviction to the defendants of immigration crimes who violated Article 114 paragraph (2) about the responsibility of the passengers that must be disembarked or embarked by transport companies for immigration control by immigration officials or inspectors in TPI, otherwise criminal charges with 2 (two) years of maximum imprisonment and/or IDR 200,000,000.00 or two hundred million rupiah of penalty would be imposed. In relation to this disparity in the immigration crime articles, the Pandeglang District Court in Convictions number: 174/Pid/B/2012/PN/Pdg and Convictions number: 184/Pid/B/2012/PN/Pdg imposed 9 (nine) months of imprisonment and 10 (ten) million-rupiah penalty against the defendant. However, with the same crime in another case, the Pandeglang District Court Judge imposed a prison sentence of 8 (eight) months for violating this article in Conviction number: 157/Pid.B/2012/PN.Pdg and the Conviction number 158/Pid.B /2012/PN. Pdg. In the same District Court, the panel of judges made a different decision in the convictions to the defendants for the same crime as a violation of Article 114 section (2) in Indonesian Immigration Law Number 6 of 2011.

In addition to the immigration criminal case at the Pandeglang District Court, the criminal disparity of Article 126 letter (c) shown in the provision of providing invalid data and information in applying for Indonesian travel documents or Indonesian passports will be liable to 5 years of maximum imprisonment and IDR 500,000,000 of maximum penalty. This conviction disparity occurred when the Pandeglang District Court, based on the Conviction number 156/Pid.Sus/2012/PN.Pdg, sentenced a person to 1 year and 8 months of imprisonment and 100 million-rupiah penalty. A different conviction has also been made at the District Court of Central Jakarta in the conviction number 582.PID.B/2012/PN.JKT.PST, which sentenced a defendant to 1 year in prison and 100 million rupiah of penalty.

Meanwhile, the Cilacap District Court, in Conviction number 378/Pid.Sus/2015/PN.Clp sentenced a defendant to 1 year in prison and a fine of 10 million rupiah. These conditions indicate that the panel of judges in these 3 different District Courts made various convictions against defendants for the same crime, which were found legally and convincingly to have violated Article 126 letter c of the Indonesian Immigration Law. However, with this disparity in the convictions of judges, the element of justice in legal certainty has not yet been provided for society. In the legal process, there are likely collusions between investigators and defendants, prosecutors and defendants, and judges and defendants in determining criminal sanctions or sentences. If so, the objectives of preventing violations, as argued by Jeremy Bentham, will not be likely to engage since law enforcement officers have been unable to prevent their own internal agencies from criminal violations.

Criminal Disparity and Sentencing Patterns in Immigration Criminal Provisions

The disparity in sentencing refers to discrepancies in sentencing for similar crimes and similar criteria for offenders.³² Different treatment of the same type of crime can result in injustice. Disparities in immigration criminal provisions and convictions on immigration crimes can lead to discrimination in society. According to Barda Nawawi, criminal disparities can occur due to legal or law (legislation) or judicial discretion factors. In this case, the Criminal Provisions Chapter in the Indonesian Immigration Law reflects on the construction of a varied or non-uniform penal system for criminal charges.

31 Juwita Trisna Rahayu Antara News, "Pesawat Air Asia Salah Turunkan Penumpang," accessed November 8, 2022, 2016, <https://kalteng.antaranews.com/berita/253301/pesawat-airasia-salah-turunkan-penumpang>.

32 Kamil Mamaketal., "A Failed Attempt to Radically Reduce Inter-Court Sentencing Disparities by Legislation: Empirical Evidence from Poland," *European Journal of Criminology*, 2020, 2, <https://doi.org/10.1177/1477370820952729>.

In addition to the non-uniformity of criminal charges, judicial discretions related to the decision-making of convictions and the process of interpreting provisions in regulations affect gaps in sentencing disparities. Due to big diverse construction of immigration criminal provisions, the panel of judges will tend to have a different interpretation, and there will be discretion in the convictions of judges. External and internal factors can cause disparities in sentencing between judges. External factors can refer to differences in education levels or organizational culture of the people in the work environment of the court, while internal factors relate to morality. In immigration criminal charges, in court, the convictions of judges refer to material evidence and their own considerations in deciding a case based on the Indonesian Criminal Procedure Code in Article 197. The Judge made convictions against the defendant only referring to the facts during the trial session and trial examination, that may result in different judges' decisions for the same crime.³³

Indonesian Immigration Law of 2011 is part of administrative legislation with criminal charges. The formulation of penal policy decisions or criminal charges written in the Immigration Criminal Provisions Chapter has a non-uniform pattern. According to Barda Nawawi, primary criminal charges include the death penalty, custody, and imprisonment.³⁴ The Criminal Provisions in the Indonesian Immigration Law contain various criminal charges such as imprisonment, detention, and fines. Criminal charges, as stated in criminal provisions of Indonesian Immigration Law, are dominated by imprisonment and fines. Custody is only found in Article 116 concerning a foreign national who does not comply with their obligations while staying in Indonesia as regulated in Article 71 and in Article 117, which relates to the owner or manager of accommodation who does not report their foreign guests staying at their places. This means that the various sentencing patterns are constructed subject to the characteristics of cases or crimes in the context of quality and quantity by considering the social, cultural, economic, security, and political impacts. However, these various sentencing patterns cause the potential for disparities such as multiple interpretations of the provisions of criminal charges as stated in articles, differences in Investigation Reports (BAP) by investigators, charges and demands of prosecutors, and convictions by judges, which can affect injustice and distrust in public.

In addition to the various types of primary criminal charges, the various sentencing patterns are found in several articles of Immigration Criminal Provisions in Indonesian Immigration Law. In determining the length of imprisonment or confinement, there is a maximum-minimum pattern consisting of specific maximum-minimum general and specific maximum-specific minimum. Most of the Articles of Immigration Criminal Provisions include a specific maximum-minimum general pattern. An example of a general maximum-minimum pattern is found in Article 113, "Someone who deliberately enters or leaves Indonesia's Territory who does not present before an immigration inspection by the TPI Immigration Officer written in Article 9 paragraph (1) shall be imposed on the 1 (one) year of maximum imprisonment and/or IDR 100,000,000 or one hundred million rupiah of maximum penalty". In addition to Article 113, articles with this pattern include Articles 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135 and they write phrases "maximum" (paling lama in lengths of period and paling banyak in fines/penalty). These provisions indicate a specific maximum-general minimum pattern in determining imprisonment for a maximum of years and a maximum fine in rupiah as a special maximum, but a minimum is not set; it is called a general minimum.

A different pattern is found in Article 125 of Indonesian Immigration Law of 2011, which prohibits every foreign national from staying or residing in a prohibited area without permission according to Article 48 section (4). This provision applies 3 (three) years of maximum imprisonment and/or IDR 300,000,000 or three hundred million rupiah of maximum penalty. It shows that Article 125 has a pattern of punishment with a specific maximum-minimum general because it has a fixed maximum imprisonment and minimum fines. Besides, the specific maximum and specific minimum patterns are found in Article 120 in Indonesian Immigration Law Number 6 of 2011 that the crime of people smuggling is liable to 5 (five) years as a minimum imprisonment and 15 (fifteen) years as a maximum imprisonment, and IDR 500,000,000 or five hundred million rupiah as a minimum penalty and a maximum of IDR 1,500,000,000 or one billion five hundred million rupiah as a maximum penalty. This maximum-minimum pattern must contain elements that include

33 Gulö and Muharram, "Disparitas Dalam Penjatuhan Pidana," 216.

34 Muladi and Arief, *Teori-Teori Dan Kebijakan Pidana*, 44.

public protection with objective parameters for maximum penalties and individual protection elements that set boundaries of authority in imposing criminal sanctions by law enforcement agents.³⁵ In determining the length of imprisonment or confinement, there is a maximum-minimum pattern consisting of a specific maximum-minimum general and a specific maximum-minimum special. Most of the Articles of Immigration Criminal Provisions show a specific maximum-minimum general pattern. Most of the articles in the criminal provisions of the Indonesian Immigration Law may reflect the dualism paradigm.

In contrast to the Indonesian Criminal Code, which does not regulate the criminal charges of a specific minimum sentence, immigration criminal charges are a specific punishment that refers to international agreements that mandate the inclusion of a specific minimum sentence.³⁶ Article 120 is the only article in the immigration criminal charges that includes a minimum prison sentence about the UN Convention on fighting against cross border crime or United Nations Convention Against Transnational Organized Crime (UNTOC) which the Indonesian government has ratified. The convention enacts provisions that serious crimes such as people smuggling or trafficking in persons are liable to convictions by a minimum penalty of 4 (four) years in prison.³⁷ Article 120 is the only article in the immigration criminal charges that include a minimum prison sentence. Article 120 in the Indonesian Immigration Law is relevant to the principle of equality of national sovereignty and territorial integrity in the UNTOC Convention.³⁸ Bentham's principle of utilitarianism implies a theory of national sovereignty where the legislations have the authority to determine all laws that must be obeyed. In addition, the special minimum pattern in the provisions of criminal charges must be designed in a uniform and special minimum criminal model, which includes more serious charges and less serious charges for the special minimum criminal charges.³⁹

Construction of Criminal Charges in Immigration Criminal Provisions

There are three types of criminal charges: cumulative, alternative, and combination.⁴⁰ First, in the formulation of a single criminal charge, only one punishment is constructed. As seen in Article 132 of the Indonesian Immigration Law, it writes the criminal charges of imprisonment that "Immigration officers or other appointed officers who deliberately and illegitimately issue the Indonesian Travel Documents and/or issue or extend any Immigration Documents to someone whom he recognizes are illegible, shall be imposed on 7 (seven) years of maximum imprisonment". Also, a single formulation is found in the provisions in Article 133 and Article 134, which only impose one criminal charge of imprisonment.

Criminal charges with a cumulative construction that imposes two primary criminal charges are characterized by using the word "and". The cumulative charges construction is found in Article 118 of Indonesian Immigration Law, which states, "Any sponsor who intentionally provides improper information or are not complying with the sponsorship conditions as written in Article 63 section (2) and section (3) shall be imposed on a maximum of 5 (five) years of imprisonment and IDR 500,000,000 or five hundred million rupiah of maximum penalty".⁴¹ The cumulative charges which provide two criminal charges with the use of the word "and" is written in Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 126, Article 127, Article 128, Article 129, Article 131, and Article 135.

35 A. Suhariyono, "Penentuan Sanksi Pidana Dalam Suatu Undang-Undang," *Jurnal Legislasi Indonesia* 6, no. 4 (2018): 615–66.

36 M.H. Tim Kerja Dr. Mudzakkir, "Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana Dan Sistem Pemidanaan (Politik Hukum Dan Pemidanaan)," 2008, 12.

37 Farhana Farhana, "Punishment of Criminals of Trafficking in Persons: Legal Perspective on International Guidelines and Indonesian Practices," *International Journal of Criminology and Sociology*, vol. 10, 2021, 677.

38 Stanford Encyclopedia of Philosophy, "Jeremy Bentham," accessed July 2, 2022, 2015, <https://plato.stanford.edu/entries/bentham/#Sov>.

39 U. Claudia, N. ; Pujiyono, P. ; Rozah, "Pembaharuan Kebijakan Pidana Minimum Khusus Dalam Tindak Pidana Korupsi," *Diponegoro Law Journal* 7, no. 3 (2018): 237–64, <https://ejournal3.undip.ac.id/index.php/dlr/article/view/22786/0>.

40 Anggono, Riewanto, and Madril, *Hukum Keimigrasian: Suatu Pengantar*, 184.

41 Anggono, Riewanto, and Madril, 210.

The construction of alternative criminal charges in law is characterized using the word “or”.⁴² The construction of alternative charges is to provide judges the authority to decide convictions by choosing only one of two criminal charges as written in the articles of law. Article 116 of the Indonesian Immigration Law shows the alternative criminal charges, which state that “Every foreign national who does not conform their responsibility referring to Article 71 must be imposed on an imprisonment for a maximum of three months or IDR 25,000,000 or twenty-five million rupiah of a maximum penalty”. Other alternative criminal charges as written in Indonesian Immigration Law are found in Article 116, Article 117, and Article 124 letter (b).

The word “and/or” indicates the construction of alternative/cumulative criminal charges in an article of law. Article 115 in Indonesian Immigration Law contains the construction of alternative/cumulative criminal charges, which states that “Every person as a transport operator who is not responsible for paying the expenses as referred to in Article 19 section (4) and Article 79 shall be imposed on one year of a maximum imprisonment and/or IDR 100,000,000.00 or one hundred million rupiah of a maximum penalty”. Article 113, Article 114, Article 115, Article 124 letter (a), Article 125, and Article 130 in Indonesian Immigration Law illustrate the construction of alternative/cumulative criminal charges.

In terms of convictions, Jeremy Bentham argues that a sentence is imposed on someone by looking at a lot of considerations, including that punishment must be easily increased or reduced, measurable, analogous to a violation, as a sample, appropriate, popular, and remedial. It is impossible for these criteria to be incorporated in one sentence, so it is necessary to combine various punishments that may fit its composition. Legislation should reflect simplicity, clarity, and precision. Since it contains various types of punishment, criminal charges should not be considered “cruel”.⁴³ As such, Indonesian immigration criminal provisions are found to be less simple and less precise, which may cause loopholes in law enforcement to provide different interpretations of various violations. It implies that the less the legal certainty in criminal charges, the more prejudiced the punishments will be. The use of alternative, cumulative, alternative/cumulative criminal charges in the Criminal Provisions Chapter of Indonesian Immigration Law may not provide legal certainty and justice in immigration law enforcement. Penalties or other types of criminal charges in such provisions may not be measurable since they do not adjust to the severity of the violation and the losses incurred. The provisions of criminal charges in the Indonesian Immigration Law, a special criminal law, have not constructed specific criminal charges with no penal formulations and no mitigation and severity aspects of criminal charges.⁴⁴

The Principle of Strict Liability in Immigration Criminal Provisions

Immigration Criminal Provisions hold the principle of strict liability or absolute responsibility, in which a criminal offense does not require pieces of evidence of either guilty or intentional aspects.⁴⁵ In the general structure of criminal law, there are four quadrants of moral and legal responsibility, including criminal acts (*actus reus*), intentions (*mens rea*), without justification (absence of justification), and without reason (absence of excuse).⁴⁶ It implies that if one or the four quadrants are not found, the principle of strict liability can be used in imposing criminal charges. The principle of strict liability that is contained in Article 125, which prohibits foreign nationals from entering, staying, or residing in designated areas, is declared prohibited. This article does not incorporate the elements of moral and legal responsibility as mentioned in the 4 quadrants and does not require evidence for imposing criminal charges. In the Anglo-Saxon legal system or common law, the principle of strict liability is applied to violations or crimes that do not disturb public order or have a significant social impact.

As cited from Hanafi Amrani, the principle of strict liability does not consider whether there is an element of intention or carelessness in imposing criminal charges because the main element in this principle

42 Anggono, Riewanto, and Madril, 211.

43 Jeremy Bentham, *Teori Perundang-Undangan : Prinsip-Prinsip Legislasi, Hukum Perdata Dan Hukum Pidana (The Theory of Legislation)*, ed. Delta Sri Wulandari (Nusa Media, 2010), 383.

44 C. Huda, “Pola Pemberatan Pidana Dalam Hukum Pidana Khusus,” *Jurnal Hukum Ius Quia Iustum* 18, no. 4 (2011): 508–24.

45 Anggono, Riewanto, and Madril, *Hukum Keimigrasian: Suatu Pengantar*, 206.

46 Michael Moore, “The Strictness of Strict Liability,” *Criminal Law and Philosophy* 12 (2018): 514, <https://link.springer.com/article/10.1007/s11572-017-9438-5>.

only refers to *actus reus*.⁴⁷ In the Indonesian Immigration Law, Article 116, Article 117, Article 119, Article 120, Article 123, Article 125, Article 133 letter (a), Article 134, Article 135, Article 136 do not apply the word “intentionally”, so it does not require a presence of intention (*dolus*) or carelessness (*culpa*). In addition, the provisions in these Articles focus on criminal acts or elements of guilt. However, an article without the word “intentionally” does not automatically apply the principle of strict liability. The criteria for the principle of strict liability consider social crimes and undermine public morals which violate the law.⁴⁸ The criminal provision of Indonesian Immigration Law in Article 120 about criminal charges for criminal acts of people smuggling contains the principle of strict liability. This criminal offense is against the law and has serious threats and dangers to public safety.

The concept of strict liability is confirmed by Jeremy Bentham’s concept of awareness of a violation. An offense or crime that endangers the community can affect great awareness, so arrangements are needed to mitigate future issues. The public will be worried when it is challenging to overcome and to prove violations. That is why the crime of people smuggling in Indonesian Immigration Law is categorized as a more serious offense than other ordinary crimes like a foreign national who does not report to immigration officer regarding changes in their civil status. Bentham argued that when a person commits a crime intentionally (planned) or unintentionally (without plans), their actions are the same, but the result and impact will be extremely different. Someone who plans a crime on purpose will be considered a bad and dangerous person. On the other hand, if the crime is committed unintentionally, the offender will be considered by the community as someone who is careless or ignorant. If a violation is committed by accident, the community will not feel too worried because the offender does not have any intention to violate the law. However, if a violation is committed intentionally, the intentional element is a permanent cause of the crime.⁴⁹

Legal experts have set a boundary of the principle of strict liability for some offenses that endanger the community or public welfare offenses. The social destruction criteria include serious criminal offenses (real crimes) and ordinary violations (regulatory offenses) that disturb the public interest. A criminal article can use the principle of strict liability if it conforms to three premises, such as specific criminal offense arrangements that can generate broader community welfare, complicated proof of *mens rea* elements, and severe social vulnerability caused by the committed crime.⁵⁰ For example, in Indonesian Immigration Law, in governing criminal charges, Article 120 provides criminal rules centered on the concept of strict liability for the crime of people smuggling. However, in Indonesian Immigration Law, some criminal provisions have not used the principle of strict liability for a person who is evidently against the law and public morals. Vice versa, Article 116 of the Indonesian Immigration Law writes that every foreign national who does not comply with Article 17 for not providing information or showing Travel Documents to immigration officers is subject to 3 months of maximum imprisonment or IDR 25,000,000 of penalty. It implies that it is not an offense that endangers public safety and morals, but the principle of strict liability applies to this crime.⁵¹

In practice, the principle of strict liability sets boundaries of criminal provisions. First, this principle must have a standard of judgment for losses and consequences caused by offenses that endanger the public interest and their existence in human life. Second, limitations to the values of justice should refer to the ideology of Pancasila (five principles of Indonesia), which justifies the principle of strict liability. The balance between individual interests and public interests determines criminal responsibility or strict liability. Implementing the principle of strict liability is restricted, so it is not generally applied in some criminal provisions. In addition, the offense must be proven to be unlawful in nature which violates the morality and dignity of a person.

In Indonesian Immigration Law, Article 132 writes that immigration officers or other appointed

47 Mahrus Amrani, Hanafi ; Ali, *Sistem Pertanggungjawaban Pidana: Perkembangan Dan Penerapan*, 1st Editio (Jakarta: Rajawali Pers, 2015), 119.

48 Amrani, Hanafi ; Ali, 119.

49 Bentham, *Teori Perundang-Undangan : Prinsip-Prinsip Legislasi, Hukum Perdata Dan Hukum Pidana (The Theory of Legislation)*, 284.

50 Amrani, Hanafi ; Ali, *Sistem Pertanggungjawaban Pidana: Perkembangan Dan Penerapan*, 193.

51 Nella Sumika Putri, “Sistem Pertanggungjawaban Pidana: Perkembangan Dan Penerapan,” *Jurnal Bina Mulia Hukum* 2, no. 1 (2017).

officials who intentionally and illicitly provide the Indonesian Travel Documents and/or provide or extend any Immigration Documents to a person whom they know is not eligible will be punished with a maximum of 7 (seven) years of imprisonment. Also, Article 133 states that immigration officers or other officials who let someone else violate the immigration criminal provisions will be imposed on maximum 5 of imprisonment; who intentionally breach the immigration data will be imposed on maximum 2 years of imprisonment; who intentionally do not follow the procedures of border control and at detention centers will be imposed on maximum 2 years of imprisonment; and who intentionally do not record any data in the SIMKIM (Indonesian immigration information system) will be imposed on maximum 6 months of imprisonment. These two articles reflect the principle of strict liability, a single criminal charge, and a special maximum punishment construction. However, these criminal articles for Immigration officers and other officials are constructed differently from other articles with alternative, cumulative, or alternative/cumulative criminal charges to all people or foreign nationals. This may trigger the potential for discrimination and a sense of injustice.

Corporate Crime in Immigration Criminal Provisions

The Indonesian Immigration Law regulates immigration crimes committed by corporations. In Article 1, number 25, a corporation is defined as a group of individuals and/or organized assets that exists as a legal entity or not. In Immigration Criminal Provision Chapter, Article 136 writes that immigration crimes committed by corporations are subject to a fine of 3 (three) times the number of fines in the articles they violate. Corporate crime or crime by a corporation is a crime committed by a corporation through intermediaries of its management acting for and or on behalf of the corporation. The aim is to maximize corporate profits and/or reduce operational costs such as taxes. Victims of immigration crimes committed by corporations include the state and society (public). Law enforcement against corporations is difficult to identify and abstract in nature.⁵²

According to Mardjono Reksodiputro, there are three systems of corporate responsibility as the subject of law: the corporation's administrator as a founder or as an individual, the corporation as a founder, the administrators who are responsible, and the company itself as a founder and who is responsible.⁵³ Article 136 in Indonesian Immigration Law imposes criminal charges on administrators and the corporation as the entity who is responsible for violations of Articles 114, 116, 117, 118, 120, 124, 128, and 129 committed by corporations. This means that other than these articles, if a corporation commits a crime, criminal charges will only be imposed on the corporation. The provisions for immigration violations committed by the corporation have not explained the criteria for criminal responsibility, referring to the three corporate responsibility systems. It infers that it is difficult to prove and prosecute an immigration offense committed by corporations since it has no clear definition of "corporation" and "administrator" in Indonesian Immigration Law.

The Indonesian Immigration Law applies the principle of vicarious liability explicitly in several articles, including Article 136, which regulates criminal charges against corporations that violate several immigration articles. This principle regulates the responsibility of a company or corporation for criminal offenses committed by its employees in their workplace and work relationships. Article 136 of the Indonesian Immigration Law is a criminal provision for corporations that commit immigration violations in Articles 114, 116, 117, 118, 120, 124, 128, and 129. However, the provisions in Articles 116, 117, 120, 124, 128, and 129 do not refer to criminal offenses committed by corporations but an individual or a person since it uses the phrase "every person". This could lead to confusion and ambiguity about who will be responsible for this criminal charge and criminal convictions by judges in courts of law.

William E. Hearn mentioned several conditions for applying the principle of vicarious liability,⁵⁴ such as the existence of a permanent or temporary relationship between the employer and the employee, the employee in his capacity as a staff or subordinate, not of his own free will, and in such condition, the employee must be in the environment of their work or under their authority. Not all culpabilities of employees are part of the responsibility of their superiors or managers, but if only they have a working relationship in the workplace

52 Amrani, Hanafi ; Ali, *Sistem Pertanggungjawaban Pidana: Perkembangan Dan Penerapan*, 157.

53 Amrani, Hanafi ; Ali, 178.

54 P. Giliker, *Vicarious Liability in Tort: A Comparative Perspective*, vol. 69 (Cambridge University Press, 2010), 42, <https://doi.org/https://doi.org/10.1017/CBO9780511779008>.

environment, that can be applied to this principle. In practice, the principle of vicarious liability must comply with two other principles, such as the principle of delegation and the principle of superior-subordinate law, or the Servant's Act is the Master's Act in Law. The Delegation Principle requires *mens rea* that a person delegated and committed a crime must be charged if only an aspect of intention is found. In relation to the criminal provisions in the Indonesian Immigration Law, Article 136 applies criminal charges to administrators and corporations, which means that Article 136 does not include the other two principles of vicarious liability. The criminal charges on the administrator in management (the person who is delegated) are not separable from the corporation. An administrator is a person whom the corporation delegates to complete immigration administration roles or tasks, while a manager or director leads the corporation.

The principle of vicarious liability, however, raises supporting and against arguments. This principle is considered that the punishment for the corporation is appropriate. However, it is against the philosophy of law that this principle has punished someone who is innocent, and it is inconsistent with the elements of *mens rea*. In addition, from an economic standpoint, the opposing sides consider that fines against corporations are ineffective because they can undermine investment and reduce the company's reputation resulting in more significant losses than the fines imposed by the state. Applying the principle of vicarious liability in Indonesian Immigration law is contested whether fines (penalties) can achieve the benefits expected by the state. Jeremy Bentham explained that the punishment should not be more painful than the losses incurred as a result of a crime. In addition, it is necessary to consider whether the penalty in Article 136 of the Indonesian Immigration Law can prevent criminal offenses by corporations. Jeremy Bentham argued that punishment is effective if it promotes prevention. Currently, there is no empirical data related to immigration violations by corporations since it may be challenging to prove or charge criminal offenses by corporations in Indonesia.

From the perspective of shareholders, corporations in the form of business entities consist of share ownership and managerial directors who undertake the control or supervision. Shareholders have limited responsibility for directly controlling or protecting the corporation. Fines against corporations change corporate incentives, thus creating pressure on management to comply more with the law. From the perspective of a senior manager, this manager is in full control of the company. However, if there are cases of misconduct by junior managers, the company and junior managers will face criminal liability, while senior managers choose to ignore what has happened. Senior managers can provide additional incentives, but direct subordinates will take risks of criminal charges. In this sense, the provision of criminal charges against corporations can potentially have a negative impact on the law enforcement process. First, the public prosecutor or the prosecutor can only sentence officers of officials other than those regulated in Article 136 even though the legal facts show that the main actor of a crime is a corporation. Second, despite multiple times of fines or penalties as criminal charges on corporations, the purpose of making laws is not achieved. Third, the number of immigration crimes is increasing because a company will deliberately commit the crime by considering profits and loss calculations.⁵⁵

A criminal provision's most significant component is its criminal system. The increase in immigration violations can be caused by the inaccuracy of the types of criminal charges that officers, investigators, prosecutors, and judges decide. The construction of criminal charges, which is less comprehensive as written in the Criminal Provisions Chapter of Indonesian Immigration Law, may become one of the reasons for immigration violations or criminal offenses. Prevention of immigration crimes may not work if the criminal charges constructed and employed in law enforcement are not designed to target and are not effective. Bentham explained that a penalty can be imposed if the execution will prevent the crime from being repeated in the future. Such pre-empting efforts will affect the offenders in self-correction and discourage people from committing a crime. The imprisonment and fines in criminal provisions of Indonesian Immigration Law are relevant to Bentham's principle, but those have not considered legal constructions to minimize the gaps in sentencing disparities.

55 Amrani, Hanafi ; Ali, *Sistem Pertanggungjawaban Pidana: Perkembangan Dan Penerapan*, 185.

4. CONCLUSION

Referring to the discussions about perspective of Bentham's principles in law, elements of justice, criminal disparity, sentencing patterns, principle of strict liability, criminal charges, and corporate crime, this study concludes that:

1. the construction of Criminal Provisions in the Indonesian Immigration Law No. 6 of 2011 have not been effectively able to prevent immigration violations and cross-border crimes in Indonesia. In addition, there are reactive and not pre-empting immigration criminal provisions, poor criminal provisions during immigration examinations, disparities in Judge's decisions at courts, varied patterns of punishment and sanctions, and inconsistency of criminal liability arrangements against corporations. It implies that the articles in the Immigration Criminal Provisions have various patterns which may have the potential to cause disparities in sentencing. With the disparity in the convictions of judges in the three District Courts about immigration crimes, the element of justice in legal certainty has been missing in public. In addition to the element of justice in the immigration criminal provisions, the pre-empting elements have not been expanded since the articles of the criminal provisions regulate immigration crimes or offenses when an individual or foreign national is inside the territory of Indonesia rather than during the immigration clearance process at TPI.
2. Indonesian Immigration Law No. 6 of 2011 is categorized into external special administrative law. The Criminal Provisions Chapter in the Indonesian Immigration Law is urged to reduce the discrepancy in the construction of the criminal system. Apart from the non-uniformity of criminal sanctions, judicial discretion related to decision-making and the process of interpreting laws and regulations must narrow the gaps in sentencing disparities, especially for law enforcement officers, including judges, in deciding cases of immigration crimes. The varied sentencing patterns must not be found in several articles on the next Immigration Criminal Provisions and the principle of Strict Liability or Criminal Liability means that a criminal offense does not require proof and the element of error or intention.
3. an inconsistency in the regulation of criminal liability for corporations was found because the criteria for an individual as a legal responsibility has not yet been determined. The practice of the Strict Liability Principle to Immigration Criminal Provisions should be thorough because it is complicated to prove someone is found guilty. This principle is adopted from the Common Law system to stop crimes from destroying aspects of social, safety, morality, and dignity. Therefore, the criminal provisions in the Indonesian Immigration Law must likely entirely complete the criminal objectives of Jeremy Bentham, such as preventing all violations, preventing the most terrible violations, reducing the number of crimes, and reducing losses or costs incurred.

From such conclusion, this study recommends that the reconstruction of the articles in the Chapter on Immigration Criminal Provisions in Indonesian Immigration Law No. 6 of 2011 be reconstructed immediately by looking at the principles of justice and moral values or merit according to Jeremy Bentham's criminal objectives. Guidelines for imposing sentences (*strafvoetingsleidraad*) which contain principles and instructions for sentencing, need to be set up to assist the implementation of immigration law enforcement to minimize the criminal disparities by judges. Reconstruction of immigration criminal Articles is urged to achieve Bentham's principles and objectives of the law in sentencing. The reconstruction of immigration criminal articles is urged to provide boundaries for offenses that contain *dolus* or *culpa* elements, as well as the implementation of the Strict Liability principle in some articles. Reconstruction of immigration criminal provisions should design legal constructions with uniform sentencing patterns, appropriate legal paradigms, precise principles and should minimize gaps in sentencing disparities and fraud by law enforcement officers. Immigration criminal provisions is recommended to include patterns in formulating special criminal offenses, penal patterns, and classifications of criminal charges. In constructing the new Indonesian Immigration Bill, it is necessary to include cybercrimes in terms of global migration and cross-border practices of Indonesia by both Indonesian citizens and foreign nationals based on the Indonesian Electronic Information and Transactions Law. In addition, there should be concrete and comprehensive corporate criminal provisions to realize legal certainty over a person as a criminal responsibility. Immigration criminal provisions should promote pre-empting provisions with more comprehensive criminal articles that can prevent cross-border crimes during immigration clearance at TPI.

ACKNOWLEDGMENT

We would like to thank University of Balikpapan and University of Indonesia for their support and academic freedom. This article has never been published, and there is no conflict of interest and funding to disclose.

REFERENCES

- Akbari, Anugerah Rizki. "Explaining Crimmigration in Indonesia: A Discourse of the Fight Against People Smuggling, Irregular Migration Control, and Symbolic Criminalization." *Indonesia Law Review* 5, no. 3 (December 31, 2015). <https://doi.org/10.15742/ilrev.v5n3.163>.
- Amrani, Hanafi ; Ali, Mahrus. *Sistem Pertanggungjawaban Pidana: Perkembangan Dan Penerapan*. 1st Editio. Jakarta: Rajawali Pers, 2015.
- Anggono, Bayu Dwi, Agus Riewanto, and Oce Madril. *Hukum Keimigrasian: Suatu Pengantar*. Edited by Jimmy Usfunan. 1st ed. Depok: PT Raja Grafindo Persada, 2022.
- Antara News, Juwita Trisna Rahayu. "Pesawat Air Asia Salah Turunkan Penumpang," 2016. <https://kalteng.antaraneews.com/berita/253301/pesawat-airasia-salah-turunkan-penumpang>.
- Badan Pembinaan Hukum Nasional. "Laporan Akhir Analisis Dan Evaluasi Hukum Terkait Keimigrasian," 2020. https://bphn.go.id/data/documents/ae_2_buku_pokja_keimigrasian.pdf.
- Badan Pusat Statistik. "Warga RI Melancong Ke Luar Negeri Turun 75% Imbas Pandemi." Accessed May 19, 2022. <https://databoks.katadata.co.id/datapublish/2021/12/29/warga-ri-melancong-ke-luar-negeri-turun-75-imbaspandemi>.
- Bentham, Jeremy. *Teori Perundang-Undangan : Prinsip-Prinsip Legislasi, Hukum Perdata Dan Hukum Pidana (The Theory of Legislation)*. Edited by Delta Sri Wulandari. Nusa Media, 2010.
- Claudia, N. ; Pujiyono, P. ; Rozah, U. "Pembaharuan Kebijakan Pidana Minimum Khusus Dalam Tindak Pidana Korupsi." *Diponegoro Law Journal* 7, no. 3 (2018): 237–64. <https://ejournal3.undip.ac.id/index.php/dlr/article/view/22786/0>.
- Directorate General of Immigration. "Laporan Kinerja Direktorat Jenderal Imigrasi Tahun Anggaran 2021." Jakarta, 2021.
- Farhana, Farhana. "Punishment of Criminals of Trafficking in Persons: Legal Perspective on International Guidelines and Indonesian Practices." *International Journal of Criminology and Sociology*. Vol. 10, 2021.
- Giliker, P. *Vicarious Liability in Tort: A Comparative Perspective*. Vol. 69. Cambridge University Press, 2010. <https://doi.org/https://doi.org/10.1017/CBO9780511779008>.
- Gulö, Nimerodi, and Ade Kurniawan Muharram. "Disparitas Dalam Penjatuhan Pidana." *Jilid* 47, no. 3 (2018): 215–27.
- Herwanto, Cherly Dwi Cahya. "Diabaikannya Alat Bukti Dan Fakta Hukum Oleh Judex Facti Yang Terungkap Di Persidangan Perkara Keimigrasian Sebagai Upaya Kasasi Penuntut Umum (Studi Putusan Mahkamah Agung Nomor 96 K/Pid.Sus/2015)" 8, no. 1 (n.d.).
- Huda, C. "Pola Pemberatan Pidana Dalam Hukum Pidana Khusus." *Jurnal Hukum Ius Quia Iustum* 18, no. 4 (2011): 508–24.
- Imenda, Sitwala. "Is There a Conceptual Difference between Theoretical and Conceptual Frameworks?" *Journal of Social Sciences* 38, no. 2 (February 2014): 185–95. <https://doi.org/10.1080/09718923.2014.11893249>.
- Indonesia, Republik. Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian (2011).
- Kantor Imigrasi Kelas I Khusus TPI Soekarno Hatta. "Berkas Laporan Akuntabilitas Kinerja Instansi Pemerintah (LAKIP) Kantor Imigrasi Kelas I Khusus TPI Soekarno-Hatta Tahun 2020," 2020.
- Mamak, Kamil, Joanna Dudek, Maciej Koniewski, and Daniel Kwiatkowski. "A Failed Attempt to Radically Reduce Inter-Court Sentencing Disparities by Legislation: Empirical Evidence from Poland." *European Journal of Criminology*, 2020. <https://doi.org/10.1177/1477370820952729>.

- Manu, Emmanuel ; Akotia, Julius. *Secondary Research Methods in the Built Environment*. 1st Editio. London: Routledge, 2021. <https://doi.org/https://doi.org/10.1201/9781003000532>.
- Moore, Michael. "The Strictness of Strict Liability." *Criminal Law and Philosophy* 12 (2018): 513–29. <https://link.springer.com/article/10.1007/s11572-017-9438-5>.
- Muladi, and Barda Nawawi Arief. *Teori-Teori Dan Kebijakan Pidana*. 4th ed. Bandung: PT Alumni, 2010.
- Parengkuan, Ridel. "Pemberlakuan Sanksi Pidana Terhadap Pelaku Tindak Pidana Keimigrasian." *Lex Crimen* IV, no. 1 (2015): 71–78.
- Pramana, G. M. A. ; Nurkumalawati, Intan ; Arifin, Ridwan. "Policy Evaluation on Immigration Electronic Stamp, Biometric Data, and Autogate Machines in the Context of Geopolitics." *Jurnal Ilmiah Kebijakan Hukum* 16, no. 1 (2022): 41–60. <https://ejournal.balitbangham.go.id/index.php/kebijakan/article/view/2160/pdf>.
- Putri, Nella Sumika. "Sistem Pertanggungjawaban Pidana: Perkembangan Dan Penerapan." *Jurnal Bina Mulia Hukum* 2, no. 1 (2017).
- Santosa, A. A. G. D. H. ; Wijaya, I.M.M. ; Sundariwati, N. L. "Principles of Selective Immigration Policy in Relation to Visa Free Entry for Tourism Pusposes." *Jurnal Ilmiah Kebijakan Hukum* 16, no. 2 (2022): 235–52. <https://ejournal.balitbangham.go.id/index.php/kebijakan/article/view/2596/pdf>.
- Setiadi, W. & Afrizal, R.A. "Implikasi Kebijakan Bebas Visa Berdasarkan Peraturan Presiden Tentang Bebas Visa Kunjungan: Perspektif Ketenagakerjaan." *Jurnal Ilmiah Kebijakan Hukum* 13, no. 3 (2019): 311–22. <https://ejournal.balitbangham.go.id/index.php/kebijakan/article/view/790>.
- Stanford Encyclopedia of Philosophy. "Jeremy Bentham," 2015. <https://plato.stanford.edu/entries/bentham/#Sov>.
- Suhariyono, A. "Penentuan Sanksi Pidana Dalam Suatu Undang-Undang." *Jurnal Legislasi Indonesia* 6, no. 4 (2018): 615–66.
- Taekema, Sanne. "Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice." *Law and Method*, March 9, 2018. <https://doi.org/10.5553/rem/.000031>.
- Tim Kerja Dr. Mudzakkir, M.H. "Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana Dan Sistem Pemidanaan (Politik Hukum Dan Pemidanaan)," 2008.
- United Nations. "Global Issues Migration." Accessed May 17, 2022. <https://www.un.org/en/global-issues/migration>.
- Zein, Fatwa, M. Alvi Syahrin, and Tony Mirwanto. "Reformulasi Sanksi Pidana Pasal 116 Juncto Pasal 71 Huruf B Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian." *Jurnal Ilmiah Kajian Keimigrasian* 5, no. 1 (2022): 97–118. <https://doi.org/10.52617/jikk.v5i1.326>.

