



Legal Analysis Of Immigration Detention Efforts In Immigration Criminal Enforcement

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Received: 29 June 2022; Revised: 20 May 2023; Accepted: 27 May 2023

Abstract

This study aims to analyze the legal arrangements for immigration detention efforts in law enforcement of immigration crimes. This research was conducted using empirical research methods conducted in Makassar Immigration Office Class I TPI. Data collection techniques through interviews and literature studies. The data collected is processed and analyzed using qualitative analysis techniques and presented descriptively. The results of this study indicate that: Implementation of immigration detention efforts in law enforcement of immigration crimes is basically set on Law Number 6 of 2011 concerning Immigration, Government Regulation Number 31 of 2013 concerning Implementing Regulation of Law Number 6 of 2011 concerning Immigration and Regulation of the Minister of Law and Human Rights Number 39 of 2021 concerning Immigration Crime Investigation Procedures.

Keywords: Criminal Act, Immigration Detention, Immigration

Introduction

The State of Indonesia as a legal state in accordance with what is mandated in the state constitution, namely Article 1 of the 1945 Constitution of the Republic of Indonesia, has an obligation to continue to respect and uphold the values and principles of the rule of law.

It is impossible for the law to regulate all activities of human life completely, because there are not many human activities. Except that the law is the work of humans whose abilities are very limited. There are times when the law is incomplete and unclear. Nevertheless, the law must be enforced. (Sudikno Mertokusumo, 1987)

In line with the statement above, Ismail Saleh stated that: (Baharuddin Lopa, 1987) "Enforcing the law is not just carrying out "dead" letters, sentences or articles in legislation as positive law. Positive law has shortcomings or voids, because of the nature of positive law. indeed cannot keep pace with the dynamics of the development of society, even in some respects it lags behind the problems that arise in society. This legal vacuum can be filled by judges, so that judges in this case also become

lawmakers.

According to Donald Black (Achmad Ali, 2015), from a sociological point of view, the law is not what legal experts view as binding rules and must be implemented, but as, for example, more observable tendencies in the behavior of judges, police, lawyers, prosecutors. public or administrative officials.

One of the many legal principles that must be implemented and upheld is the principle of an independent and impartial judiciary. The principle of the independence of judiciary is an important characteristic of a democratic rule of law. So that there is no country that is called a democratic country without judicial practice that is independent, free and impartial. (Abd Rasyid As'ad, 2011)

An independent and impartial judiciary is applied in several judicial systems in Indonesia, one of which is the criminal justice system which is a judicial network that uses criminal law as the main means of both material criminal law and formal criminal law as the implementer of material criminal law enforcement.

The notion of criminal acts in the Criminal Code is known as the term criminal act derived

from a term known in Dutch criminal law, namely *strafbaar feit* or offense, while legislators use the term criminal event or criminal act or crime. (Amir Ilyas, 2012)

Based on this, it is clear that the Criminal Procedure Code as a criminal procedure law is based on the principle of legality. Implementation of the implementation of the Criminal Procedure Code originates from the starting point of the rule of law, namely that all actions must: (Amir Ilyas et al, 2012)

- a. Based on the provisions of the law and the Act
- b. Placing the interests of law and legislation above all else, so as to create a life of the nation's people who are subject to the rule of law in harmony with the laws and the feeling of justice of the Indonesian nation.

The Criminal Justice System refers to a working mechanism in crime prevention that uses a system approach as its basis. Crime prevention as a part of law enforcement policy is required to be able to place every element/component of the legal system towards a conducive and participatory direction. This was stated by Rusli Muhammad who argued that the Criminal Justice System is a judicial network that collaborates in an integrated manner between its parts in achieving a goal both in the short and long term. (Rusli Muhammad, 2011)

The criminal justice system is a judicial network that uses criminal law as the main means, both material criminal law and formal criminal law in its implementation. However, substantially must be seen in a social context. Its too formal nature if it is based on the interest of legal certainty will bring disaster in the form of injustice. In this regard, it can be understood that in fact the implementation of the criminal justice system involves humans, both as subjects and objects. So that it can be said that the main requirement for the criminal justice system to be rational, the system must be able to understand and take into account its impact on humans or human society, both within the framework of the system and those outside the system. (Sidik Sunaryo, 2015)

As a system, criminal justice which has a structural device or sub-system should work in a coherent, coordinating and integrative manner in order to achieve maximum efficiency and effectiveness. This sub-system is in the form of Police and Civil Servant Investigators,

Prosecutors, Courts, Corrections and Correctional Institutions, both institutional and non-constitutional, such as advocates. (*Ibid*)

Civil Servant Investigators as part of the criminal justice system carry out the functions and duties of law enforcement at the stage of investigation criminal acts in accordance with the authority established by the law that governs it. One of the Civil Servant Investigators is Immigration who carries out the function as an investigator of immigration crimes based on Law Number 6 of 2011 concerning Immigration.

In Law Number 6 of 2011 concerning Immigration, immigration is intended as the front guard in order to maintain the upholding of sovereignty, as the organizer of supervision of matters concerning the traffic of people entering and leaving the territory of Indonesia. (A. Jazuli, 2016) To achieve this goal, Immigration carries out the function of law enforcement. The law enforcement function includes supervision related to the presence and activities of foreigners to the investigation of immigration crimes. (Abdullah Sjahriful, 1993)

Technically, the implementation of the immigration law enforcement function consists of two forms, namely the administrative form and the pro-justice form. (Santi Puspitasari, 2020) Law enforcement in the administrative form is realized in the form of Immigration Administrative Actions as regulated in Article 75 of Law Number 6 of 2011 concerning Immigration. Meanwhile, law enforcement in the form of pro-justice is realized form of criminal acts of law enforcement against violations of immigration which include the task of investigating, investigating, filing cases and submitting case files to the public prosecutor according to criminal procedural law. (*Ibid*)

Immigration crimes are contained in the Criminal Provisions Chapter XI of Law no. 6 of 2011 concerning Immigration in Articles 113 to 136. The regulation of immigration crimes applies to both Indonesian citizens and foreign nationals.

The existence of foreigners in Indonesia, not a few who abuse immigration permits which are also regulated as immigration crimes in Article 122 of Law No. 6 of 2011 concerning Immigration. For the sake of supremacy and law enforcement as well as maintaining the authority of the state, including the authority of the state gate apparatus, foreigners who misuse immigration permits are subject to actions in the

form of criminal law actions and administrative legal actions.(Marbun, 2007)

Investigation of immigration crimes is a mandate from Law Number 6 of 2011 concerning Immigration. The existence of special powers granted by law to civil servant investigators immigration in handling criminal cases in the field of immigration. Civil servant investigators have very important duties and roles in efforts to handle immigration crimes that aim to eradicate immigration crimes. (A.Jazuli, *Op.Cit.*)

Officials of the Directorate General of Immigration who are given special authority as investigators have the right to carry out a series of necessary actions for the purpose of investigating immigration crimes. The authority of the Civil Servant Investigator of the Directorate General of Immigration in the context of investigating immigration crimes is as regulated in Article 105 of Law Number 6 of 2011 concerning Immigration.(Lely Herlina, 2020)

As a form of carrying out their duties as investigators, officials of the Directorate General of Immigration are known as independent investigators, meaning that the authority of the investigators of the Directorate General of Immigration is carried out alone or independently starting from the start of the investigation to filing, submission of case files and evidence and suspects directly to the Public Prosecutor or Prosecutor in the region. Indonesian law.(*Ibid*)

Nowadays, immigration crimes often occur related to residence permits for foreign nationals. Immigration crime law enforcement in the form of pro-justice based on criminal procedural law first conducts an investigation before being upgraded to the investigative process.

In practice, at the stage of the investigation process, foreigners who are suspected of committing immigration crimes are first subject to immigration administrative measures in the form of detention, namely the obligation to reside in a certain place, in this case the immigration detention room at the immigration office Furthermore, if the legal process has been upgraded to an investigative process, the foreigner who has become a suspect will be detained by the Immigration Civil Servant Investigator at the State Detention Center.

At first glance, the imposition of detention

looks like detention in the process of investigating a criminal act, namely by placing a person in a certain room and temporarily depriving the foreigner of the freedom of the person who is subject to detention. This is certainly a study that interests the author to analyze how the legal arrangements for immigration detention efforts are in enforcing the law on Immigration Crimes?

Materials and Method

Based on the formulation of the problem to be achieved in this research, the form of this thesis research is in the form of normative-empirical legal research, namely legal research whose object of study includes statutory provisions and their application to legal events.

Research conducted by the author to achieve effectiveness and accuracy, the authors set out to obtain data and information in the preparation of this paper, the research will be carried out at the Immigration Office Class I TPI Makassar

Data obtained from the field, both primary data and secondary data were analyzed using qualitative analysis techniques, then presented in descriptive form. Descriptive explanation is to explain the data obtained as they are. Based on the identification of the problem formulation and research objectives, the data analysis is expected to be able to describe to other parties what and how the position of immigration detention is in the criminal justice system in law enforcement of immigration crimes.

The approach used to conduct the analysis is using a statute approach, conceptual approach, and comparative approach.

Results and Discussion

Legal Instruments for Immigration Detention Efforts in Law Enforcement of Immigration Crimes.

As an implementation of the duties and functions of law enforcement in the field of immigration, all the rules of immigration law contained in Law Number 6 of 2011 concerning Immigration and its implementing regulations are aimed not only at Indonesian citizens but also for foreign nationals. The function of immigration law enforcement has an important role because it is related to state sovereignty. (Imam Santoso, 2014)

Broadly speaking, in the Immigration Law,

there are two types of immigration law enforcement carried out by immigration law enforcement officers. the two types of actions are Immigration Administrative Actions and Immigration Crimes.

Immigration Administrative Actions are administrative sanctions imposed by immigration officials against foreign nationals. The Immigration Administrative Action itself in the Immigration Act is regulated in article 75 which consists of several actions, namely:

- a) Inclusion in the list of prevention and deterrence
- b) Restriction, change or cancellation of residence permit
- c) Prohibition to be in one or several certain places in the Indonesian Territory
- d) The requirement to reside in a certain place in the territory of Indonesia
- e) Imposition of expenses; and or
- f) Deportation from Indonesian territory.

Immigration crime is aimed at anyone who commits a crime as regulated in the immigration law starting from article 113 to article 135 whose investigation is carried out based on the criminal procedure law carried out by the Immigration Civil Servant Investigator.

Immigration Civil Servant Investigators in carrying out their immigration law enforcement functions are given the authority as immigration crime investigators. This authority is regulated in Article 106 of the Immigration Law, namely:

- a) Receiving a report on the existence of a Crime of Immigration;
- b) Looking for information and evidence;
- c) Take the first action at the scene;
- d) Prohibit anyone from leaving or entering the scene of a case for the purpose of investigation;
- e) Summon, examine, search, detain or arrest a person suspected of committing a crime;
- f) Detain, examine, and confiscate travel documents;
- g) Ordering the suspect or suspect to stop and checking his/her identity;
- h) Examine or confiscate letters, documents, or objects related to the crime of immigration;
- i) Summoning someone to be examined and heard as a suspect or witness;
- j) Bring in the necessary experts in connection with the examination of the case;
- k) Conduct inspections in certain places where letters, documents, or other objects

are suspected to be related to immigration crimes;

- l) Taking photos and fingerprints of the suspect;
- m) Requesting information from the public or competent sources;
- n) To terminate the investigation; and or
- o) Take other actions according to law.

Immigration Civil Service Investigators within the Directorate General of Immigration, including the Immigration Office Technical Implementation Units throughout Indonesia, which carry out immigration law enforcement, of course, aim to achieve the objectives of the law in general, namely justice, certainty, and benefits for the community. one of the efforts to achieve the goal of law enforcement is to take legal action in the context of immigration law enforcement. Not a few were found that the Immigration Civil Servant Investigators took other legal actions in the form of carrying out detention actions in the context of investigating immigration crimes. As it is known that the act of detention is not regulated in the Criminal Procedure Code. The legal arrangements for detention actions carried out by Immigration Civil Servant Investigators are contained in Law Number 6 of 2011 concerning Immigration and Permenkumham Number 39 of 2021 concerning Procedures for Investigation of Immigration Crimes.

1. Law Number 6 of 2011 concerning Immigration.

As previously explained, there are two types of immigration law enforcement, namely enforcement through Immigration Administrative Actions and enforcement through Immigration Crimes. Detention as a type of Immigration Administrative Action itself is regulated in Article 74 letter d of the Immigration Act.

Detention itself is the embodiment of the intention of having to reside in a certain place in the Indonesian Territory. The placement is carried out in the Immigration Detention Centre or at the Immigration Detention Room. (Yasser Bagas et al, 2021) As is known in the Immigration Act, it has been stated that the Immigration Detention Room is a temporary shelter for Foreigners who are subject to Immigration Administrative Actions whose existence is at the Directorate General of Immigration. at the Immigration Office or at the Immigration Checkpoint. Meanwhile, the Immigration Detention Center is a Technical Implementing Unit that carries out the immigration function as a temporary shelter for

foreign nationals who are subject to Immigration Administrative Actions.

Detention or placing foreigners in an immigration detention house or detention room is an authority possessed by the Immigration Officer. This authority is an authority that comes from the Immigration Law which is regulated in Article 83 paragraph (1) of the Immigration Law which explains:

- a) The Immigration Officer is authorized to place a Foreigner in an Immigration Detention Center or Immigration Detention Room if the Foreigner:
- b) Being in the territory of Indonesia without having a valid residence permit or having a residence permit that is no longer valid;
- c) Being in the territory of Indonesia without having a valid travel document;
- d) Immigration administrative action is imposed in the form of cancellation of residence permit for committing acts that are contrary to laws and regulations or disturbing public security and order;
- e) Waiting for the implementation of the Deportation;
- f) Waiting for departure outside the territory of Indonesia because the entry sign was refused.

In the implementing regulations for the Immigration Law, namely Government Regulation No. 31 of 2013 concerning Implementing Regulations of Law No. 6 of 2011 concerning Immigration, the implementation of detention is divided into two types, namely detention in immigration detention rooms and detention in immigration detention houses.

Article 208 states that the placement of a foreigner in an immigration detention room is the authority of an immigration official if the foreigner:

- a. Being in the territory of Indonesia without having a valid residence permit or having a residence permit that is no longer valid;
- b. Being in the territory of Indonesia without having a valid travel document;
- c. Immigration administrative action is imposed in the form of cancellation of residence permit for committing acts that are contrary to the provisions of laws and regulations or disturbing public security and order;
- d. Awaiting execution of deportation; or
- e. Waiting for departure outside the territory of Indonesia because the entry sign was

refused.

Furthermore, Article 209 of the government regulation regulates the placement of foreigners in immigration detention centers which are the authority of immigration officials in terms of:

- a. Being in the territory of Indonesia without having a valid residence permit and or having a residence permit that is no longer valid;
- b. Being in the territory of Indonesia without having a valid travel document;
- c. Immigration Administrative Actions are subject to cancellation of residence permits for committing acts that are contrary to the provisions of laws and regulations or disturbing public security and order.
- d. Awaiting execution of Deportation; or
- e. Transfer from the Immigration Detention Room.

In general, the provisions on the placement of foreigners in the immigration detention room and immigration detention house have the same provisions, except that the immigration detention house receives transfers from the Immigration Detention Room. This is also because the shape and position is slightly different.

These differences include as stipulated in the Immigration Law that the Immigration Detention Room is a detention room that is part of the Immigration Office and the Directorate General of Immigration, while the Detention Center is a special technical implementation unit that stands alone.

In addition to the difference in form and position, the difference between an immigration detention center and an immigration detention center lies in the period of time the detention is carried out. Detention of foreigners in immigration detention rooms either at the Immigration Office or at the Directorate General of Immigration can only be carried out within a period of 30 days as stipulated in Article 208 paragraph (2) of Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration and if the time period is exceeded, foreigners can be placed in the Immigration Detention Center.

Meanwhile, the detention of foreigners in the Immigration Detention Center can be carried out for a maximum period of 10 years as regulated in the provisions of Article 214. Detention at the immigration detention center in principle is intended as a temporary placement of foreigners until they are returned to their country

of origin or known as deportation.

Although it is conceptualized that the implementation of detention at an immigration detention center is a delegation of detention in an immigration detention room that has exceeded a period of 30 days, there are several conditions that foreigners can be placed directly in an immigration detention house. Some of these conditions include: (Oldarina Asri Herwaty et al, 2020)

- a) The capacity of placing foreigners in the immigration detention room has exceeded what it should be so that the detention room is no longer able to accommodate foreigners.
- b) The principles of effectiveness and efficiency are put forward so that from the start they are placed in immigration detention centers. For example in the case of foreigners who do not have valid and valid travel documents.

Regulations related to detention, both contained in the Immigration Law or in implementing regulations in Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration, have not explicitly stated the position of detention in the law enforcement process of immigration crimes. The process of law enforcement of immigration against criminal acts of immigration as regulated in Article 104 of the Immigration Law generally stipulates that investigations of criminal acts of immigration are carried out based on criminal procedural law.

Even the implementing regulations contained in the government regulations also do not clearly regulate how the position of immigration detention is in the law enforcement process for immigration crimes. The things that are regulated are the same as previously mentioned, namely the administrative guidelines for the investigation of immigration crimes carried out the provisions with in accordance the relevant regulations and laws.

2. Regulation of the Minister of Law and Human Rights Number 39 of 2021 concerning Procedures for Investigation of Immigration Crimes.

The process of investigating criminal acts of immigration that have been regulated based on the provisions of the criminal procedure law. Nevertheless, civil servant investigators of Immigration in carrying out their duties are also equipped with regulations regarding the procedures for investigating criminal acts of immigration as regulated in the Regulation of the

Minister of Law and Human Rights Number 39 of 2021 concerning Procedures for Investigation of Criminal Acts of Immigration.

Prior to the issuance of the Minister of Human Rights and Law, Civil Service Investigators Immigration in conducting investigations were guided by the Implementing Instructions of the Director General of Immigration Number: IML.5-GR.07.02-1888 of 2016 concerning Investigation Immigration Crimes which only regulates in general the steps for investigating immigration crimes. based on criminal procedural law. Implementing Instructions also does not regulate the position of immigration detention in the investigation of immigration crimes and only regulates detention as a coercive measure in the form of restraining freedom in the process of investigating criminal acts as criminal investigations are generally carried out based on criminal procedural law.

Regulation of the Minister of Law and Human Rights Number 39 of 2021 concerning Procedures for Investigation of Immigration Crimes regulates more comprehensively regarding the steps in investigating immigration crimes carried out by Immigration Civil Servant Investigators so that they can support the implementation of effective and efficient immigration crime investigations. The regulation on the procedure for investigating immigration crimes is a further regulation of the elaboration of the Immigration Law and the Regulation of the Minister of Law and Human Rights Number 39 of 2021. The interesting thing about ministerial laws has explicitly defined the meaning detention which was previously not defined explicitly and clearly both in the Immigration Law and in Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration. As for the Regulation of the Minister of Law and Human Rights Number 39 of 2021 it defines:

Detention is the placement of a foreigner in an Immigration Detention Center or Immigration Detention Room in the examination process and waiting for the process of returning or departing abroad, or the placement of a person in an Immigration Detention Room whose citizenship status is doubtful when entering Indonesian territory. The investigation of criminal acts regulated in

the Regulation of the Minister of Law and Human Rights Number 39 of 2021 first begins with the pre-investigation process or stage. The pre-investigation stage itself is defined as a stage carried out to seek clarity on whether there is an indication of an immigration crime event.

Conceptually, the pre-investigation stage is the same as the stage of investigation regulated in the Criminal Procedure Code which provides that the purpose of investigation is an effort or action by the investigator to seek and find an event that is suspected of being a criminal act to determine whether the event can or not. investigation is carried out.

The position of detention itself can be seen at the pre-investigation stage which is regulated in the Regulation of the Minister of Law and Human Rights No. 39 of 2021. This can be seen in Article 15 which stipulates that at the pre-investigation stage or process, foreigners who are suspected of having committed immigration violations or the Criminal Acts of Immigration may be placed in the Immigration Detention Room or Immigration Detention Center. The results of the pre-investigation based on the Ministerial Regulation are mandatory to be followed up with several choices of actions, namely:

- a) Investigative Action
- b) Immigration Administrative Actions; and/or
- c) Termination of Pre-investigation

If it is continued at the investigation stage, the investigation of the crime is carried out by referring to the provisions that already exist in the criminal procedure law.

Apart from being at the pre-investigation stage, immigration detention also has a position at the judicial stage. This can be seen from the arrangements contained in Article 45 of the Regulation of the Minister of Law and Human Rights Number 39 of 2021. although there has been an instrument of detention in the investigation stage and the prosecution stage in the judiciary which is known in criminal procedural law in general.

Article 45 states that:

- 1) Foreigners who are in the process of immigration criminal offenses who are threatened with less than 5 (five) years, may be placed in the Immigration Detention Room or Immigration Detention Center.
- 2) Foreigners who are threatened with imprisonment of 5 (five) years or more, are placed in the State Detention Center.

If observed and reviewed from the provisions of the criminal procedural law. The

provision for detention of suspects in immigration crimes is actually a special regulation for detention in the procedural law process for immigration crimes. Detention under the criminal procedure law itself is only required for criminal acts that are punishable by imprisonment of five years or more, although there are also several types of criminal acts whose punishment is less than five years which can be subject to detention.

As is known, the act of detention as one of the coercive measures in criminal procedural law is required to fulfill two conditions, both subjective and objective conditions. (Andi Sofyan, et al, 2014) Both types of conditions have been determined in the criminal code of procedure. Subjective requirements can be seen in Article 21 paragraph (1) which reads: An order for further detention or detention is carried out against a suspect or defendant who is strongly suspected of committing a crime based on sufficient evidence, in the event that there are circumstances that raise concerns that the suspect or destroy evidence or defendant will escape, or repeat the crime. The objective requirements of the detention provisions are further regulated in Article 21 paragraph (4) which states that such efforts to force detention may only be imposed if:

Against a suspect or defendant who commits a attempts or criminal act well as providing assistance in a non-crime in terms of: (*Ibid*)

- a) The crime is punishable by a maximum imprisonment of five years or more;
- b) The criminal offense is punishable by less than five years but as referred to in:
 - a. The Criminal Code, namely Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 351 paragraph (1), Article 353 paragraph (1), Article 372, Article 278, Article 379 a, Article 453, Article 454, Article 455, Article 459, Article 480 and Article 506.
 - b. Rechternonnantie (violation of the Customs and Excise ordinance, last amended by Staatsblad Year 1931 Number 471, namely Article 25 and Article 26.
 - c. Law Number 22 of 1997 concerning Narcotics, namely Articles 85, 86, 87, and 88.
 - d. the Immigration Crime Act (Law Number 8 Drt. 1995, State Gazette of

1955 Number 8), namely Article 1, Article 2, and Article 4, namely not having a valid immigration document, or the person providing accommodation or assistance to foreigners who do not have valid immigration documents.

Conclusion

The implementation of immigration detention efforts in law enforcement of immigration crimes has basically been regulated in various legal instruments in Indonesia. Starting from Law Number 6 of 2011 concerning Immigration, Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration to implementing regulations which are regulated in Minister of Law and Human Rights Regulation Number 39 of 2021 concerning Investigation Procedures Immigration Crimes so that immigration detention efforts have obtained a strong legal basis which is used as a guideline by Immigration Civil Servant Investigators in carrying out immigration law enforcement duties.

Suggestion

It is necessary to make technical rules regarding procedures for immigration detention efforts in the process of law enforcement of immigration crimes by immigration civil servant investigators, especially regulation of calculating the length of detention as a form of detention so that it can reduce the detention period in the final court decision that has been there isn't any yet.

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