



Study Of Law No.6 of 2011 on Criminal Liability of Foreigners Who Violate Their Stay Permit In Indonesia (Overstay)

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Abstract: *The purpose of this research includes the regulation of citizen residence permits in Indonesia based on the Law on Immigration and how sanctions for citizens who violate residency permits in Indonesia or commonly referred to as Overstay. The research used by researchers is a type of normative juridical research (legal research), namely using the source of legal materials in the form of legislation, decisions / court provisions, legal theory, approaches from books related to legal issues that are examined. Violations committed in the form of exceeding the deadline for residence permits (overstay), are subject to deportation as a special measure of immigration, legal sanctions against citizens who do not have a residence permit through administrative measures and criminal sanctions, subject to 5 years in prison, a fine of 500 million for those who fake visas / residence permits with the intention of being used in / out of Indonesia. 6 Year 2011 on Immigration, In its implementation, immigration control is a shared responsibility between immigration officials and the public, with the investigation of immigration crimes carried out by Immigration Seroyant Investigators (PPNS) in coordination with the Indonesian National Police.*

Keywords: *Criminal Liability, Immigration, Overstay, Residence Permit.*

Introduction

The Immigration Office, an organization that oversees matters pertaining to the flow of foreign nationals into the Republic of Indonesia, is responsible for issuing residency permits. It operates on the basis of selective principles, or selective policy. According to Pancasila and the 1945 Constitution, foreigners should only be allowed to contribute to the welfare of the country and the Republic of Indonesia if they do not pose a threat to public safety and order (Khalis et al., 2020).

In connection with initiatives to use natural resources for the benefit of the community, the Unitary State of the Republic of Indonesia (NKRI) is able to expand its cooperation with other nations. NKRI requires relationships with the outside world, in the form of investment, technology, expertise and markets abroad to market products in the form of oil and gas (oil and gas) and non-oil and gas, as well as from the aspect of tourism where Indonesia seeks to attract tourists, and make the tourism sector as one of the sources of state revenue. This condition has led to an increase in the entry of foreign nationals into

Indonesia.

Law Number 6 Year 2011 on Immigration is the legal framework that governs foreigners' entry and departure from Indonesian territory. The enactment of this law was genuinely carried out to establish constraints on legal acts undertaken by foreign countries in their destination countries. The definition of immigration clarifies that immigration is a transportation issue in order to preserve state sovereignty (Irfani Wicaksono, 2021).

Foreigners must have an immigration permit in order to be granted a residence permit on Indonesian soil. An immigration permit serves as documentation of a foreign national's lawful presence on Indonesian soil. It includes:

1. Stopover Permit
2. Visit Permit
3. Permits for Limited and Permanent Stays (Saharuddin et al., 2021)

Therefore, it is considered an immigration crime when foreign nationals enter Indonesia and exit the country without a valid travel document. Any conduct that breaches immigration law is considered an immigration crime, and those who do so face criminal penalties as outlined in Article 119, Paragraph 1 of the immigration criminal laws (Rika Widianita, 2023).

Among other things, Law No. 6 Year 2011 Article 119, Paragraph 1 "Any foreign national who enters and/or stays on Indonesian soil without a valid travel document and visa as specified in Article 8 faces a maximum fine of Rp. 500.000.000,00 (five hundred million rupiah) and five (five) years in prison".

The article clearly states that foreigners who do not have permission to enter the territory of Indonesia are subject to imprisonment and fines commensurate with the offense committed, but in some cases criminal sanctions and fines are not applied properly.

In January 2024, 927,746 foreign visitors entered Indonesia through all gates. Of them, 760,036 visits, or 81.93%, were recorded in immigration records, and 167,710 visits, or 18.07%, were recorded using mobile positioning data at border gates. This figure was up 16.19 percent from January 2023, when there were 798,459 visits (Fadlhi, 2025). With the large number of foreigners coming to Indonesia, there are also many foreigners who commit criminal acts such as overstay and entering without a residence permit, approximately 130,000 foreign nationals were found to be overstaying and entering the State of Indonesia's territory without a residency permit, according to the Ministry of Law and Human Rights. 2023, a report from the Directorate General of Immigration showed that more than 100,000 foreigners were recorded as overstaying, although this number may change due to several factors such as pandemic restrictions that have been lifted and the increasing number of tourists.

Many foreigners who overstay are due to negligence in extending their residence permits, changes in visa-related rules or policies, or unfamiliarity with Indonesian immigration provisions (PANJAITAN, 2023). And foreigners who enter without a residence permit, data regarding foreigners who enter without a residence permit is more difficult to obtain because it is directly related to immigration actions that can be detected at the time of inspection at the entrance. Based on reports in previous years, the number of immigration

violations by foreigners who entered without a visa or valid permit is less than that of overstay cases. However, the exact number of violations is also affected by the intensity of surveillance and actions taken by immigration officers at the point of entry.

Every foreign national can commit various kinds of criminal acts that make his immigration site from legal to illegal to be in the territory of the republic of Indonesia. For example, a foreign national who has been declared legal and obtained permission to enter the territory of Indonesia but tries to stay longer in the territory of Indonesia within an indeterminate period of time, then it becomes invalid so that his existence becomes illegal to be in the territory of Indonesia and is considered to have overstayed or a foreign national enters the territory of Indonesia and has a travel visa that has been determined by immigration officials, However, the foreigner uses a visa with a different category than the one that has been determined, then it can also be considered a criminal offense of visa abuse and must be given a deterrent effect both in criminal action and administrative action.

The concept of territoriality is acknowledged in Article 2 of the Criminal Code (KUHP). According to this principle, the Republic of Indonesia's territory is subject to Indonesian criminal law. Republic of Indonesia, anyone who violates the law. To put it another way, everyone who commits a crime on Indonesian soil, even foreigners, is subject to the country's criminal laws (Silooy et al., 2023).

In monitoring foreigners, it is not enough if it is only carried out by immigration officials, but in this case the role of the community is also needed to support law enforcement efforts which can be realized by providing information and / or reporting the misuse of state documents and other documents to law enforcement or the authorities (Wardatul Muniroh Laili Saiful, 2024), including the involvement of the apparatus which can be realized by coordinating in providing information or reporting to the authorities including government officials such as the police prosecutor's office, the labor office and other related agencies (Hasibuan, 2022).

Thus, against the actions of foreigners who commit immigration crimes in this case entering or being in the territory of Indonesia without a valid visa and still valid (Overstay), as well as some of the descriptions above make the author interested in studying and analyzing further about how the criminal liability of foreigners against the Law No. 6 of 2011 and how the legal liability of foreigners who enter the territory of Indonesia without a residence permit.

Methodology

According to Law Number 6 Year 2011 on Immigration, the purpose of this study is to examine the criminal culpability of foreign nationals (WNA) who violate residency permits in Indonesia. To avoid straying from the problem's main emphasis, the research's scope is restricted to a methodical and focused legal study. Primary, secondary, and tertiary legal data were all employed in this study. The type of research used by researchers is normative juridical research (legal research). Normative legal research is a document study, which uses sources of legal material in the form of laws and regulations, court decisions / decrees, legal theories, and opinions of scholars, namely using sources of legal material in the form of laws and regulations, legal theories, approaches from books and other documents related to the

legal issues being studied. Normative juridical research which examines and analyzes library materials and secondary materials, then normative legal research can be referred to as library legal research, theoretical or dogmatic legal research.

Result and Discussion

1. Criminal law responsibility of foreigners against Law No. 6 of 2011 who violate the residence permit (Overstay).

The rights and responsibilities of foreigners, including those who live in Indonesia, are, in theory, distinct from those of Indonesian nationals. Certain limits apply to foreigners, especially in relation to their rights. Any foreign national who violates the Immigration Law may have their freedom of movement restricted and may even be deported, declared non-grata, or turned over to another nation, particularly if they have committed a crime (Monoarfa, 2021). Foreigners only have the right to leave Indonesia, in contrast to Indonesian citizens, who are allowed to enter and exit the country. Crimes and immigration offenses will occur when foreigners enter Indonesian territory. One of the most frequent offenses is overstay, which is perpetrated by foreign nationals. Immigration administrative action may be taken against foreign nationals who disregard or violate the laws and regulations. Strict measures will be implemented in response to transgressions by foreign nationals.

The immigration action imposed can be in the form of deportation as one of the special and distinctive actions of the immigration function. One of the most important state institutions for international migration is immigration. According to Bagir Manan, state or government administration is responsible for the immigration role (NURHIDAYATI, 2022). Therefore, immigration law can be considered a subfield of State Administrative Law, which is the exercise of executive power, specifically the tasks of state administration and government.

Promulgated on May 5, 2011, the Immigration Law is Law No. 6/2011 on Immigration. By passing this new legislation, it is hoped that it can be a solution to all types of violations, prevent the potential emergence of crimes that have a transnational nature, and the main thing is that it can guarantee and protect human rights in equal rights and position as citizens in International Law (Setiawati, 2023).

As an implementer of this Immigration Law, Government Regulation No. 31/2013 was issued, which contains derivative regulations that technically refer to the Immigration Law. One term that is well known to the public in relation to immigration is DEPORTATION (Indarti, 2021). According to Article 1 of the Immigration Law, deportation is the act of compelling foreign nationals to depart Indonesian territory. Article 75 of the Immigration Law, which deals with the implementation of deportation, specifies that there are certain situations in which deportation categories may be applied, such as:

- 1) The application of Article 13 of the Immigration Law, which states that deportation upon arrival, also known as refusal to grant permission to land (NTL). The article contains rules regarding 10 criteria under which refusal can be made to foreign nationals (Irna Juita Butar-Butar, 2024). These criteria range from technical immigration matters to reasons related to national security interests, including international crimes. Furthermore, there are further explanations for why the foreign

individual is on the International Police (Interpol) wanted list.

- 2) The implementation of deportation is carried out to provide administrative sanctions for each foreigner who is already in the territory of a country (Ninage & Diamantina, 2022). Where this occurs due to non-fulfillment of immigration requirements such as a residence permit that has exceeded the limit, and other immigration permit violations. Deportation can also occur because the person concerned commits a crime that endangers national security (Article 75 Paragraphs 1 and 2 of the Immigration Law). Following up on this issue, the Indonesian Immigration Law also contains the possibility of deportation for any foreigner who is strongly suspected of evading the laws of the country of origin (Article 75 Paragraph 3).
- 3) In line with the Indonesian District Court's ruling, deportation takes place following the foreign national's completion of a sentence of incarceration.

There are legal actions or court processes in addition to deportation, which is the form of action taken against foreigners who overstay their stay permission in Indonesia. This action can also be referred to as an immigration criminal offense. In the implementation of this action, the investigation process of immigration crimes is still carried out based on criminal procedure. Therefore, the legal basis for the implementation of this action refers to:

- 1) The 2011 Immigration Law No. 6.
- 2) The KUHAP, or Criminal Procedure Code.
- 3) The Implementation Regulation of Law No. 6 Year 2011 on Immigration, Government Regulation No. 31 Year 2013.

In this case, those authorized to conduct investigations in the field of immigration are Civil Servant Investigators (PPNS). A Civil Servant Investigator (PPNS) is an immigration officer who is legally permitted to look into immigration-related criminal charges. PPNS Immigration works in tandem with the Indonesian National Police Investigator (Polri) to conduct the inquiry.

The following types of evidence are used to examine immigration crimes:

- a) The evidence mentioned in the criminal procedure law.
- b) Additional proof in the form of data that has been spoken, communicated, received, stored electronically, or something comparable.
- c) Written statements and authorized Immigration Officials.

The enforcement of immigration law is one of the manifestations of the immigration function, namely the law enforcement function. The immigration office is responsible for carrying out this responsibility, which includes refusing to issue entry permits, deportation permits, and immigration actions. Immigration law enforcement is exemplified by these aspects. Regarding prosecutorial enforcement, this includes the power to conduct investigations, the precision of the tasks included in the investigation (such as summons, arrest, custody, interrogation, search, and seizure), the filing of case files, and their submission to the public prosecutor.

One of the situations involving immigration offenses (overstay) that was looked at in the case study of decision number 303/Pid.sus/2023/PN Cjr, stemmed from a foreign person of Negerian nationality who used a 1 (one) Time Visit Visa (VKSK) to cross into

Indonesia every foreigner who enters Indonesian territory with this visa category will get a stay permit for 60 (sixty) days and can be extended. This means that this citizen must leave Indonesia and then re-enter in order to obtain a residence permit for another 60 (sixty) days. The existence of this foreign national was discovered when the witness was on duty to conduct surveillance at the Cimacan Regional Hospital, Cipanas Sub-District, Cianjur Regency in relation to information about the death of a foreigner and met with the defendant Oluchukwu Basil Ezebuo and asked and requested the defendant to provide his travel documents or residence permit in the context of immigration control. Apparently, after checking, it was found that the passport had expired. Therefore, the actions of the defendant in accordance with the provisions stipulated by the defendant are punishable under paragraph (1) of Law No. 6 of 2011 on Immigration, Article 119.

2. Legal Responsibility of Foreigners Who Enter Indonesian Territory Without a Residence Permit

Law Number 6 Year 2011 on Immigration governs the legal obligation of foreign nationals without a residency permit. A resident permit, which includes diplomatic, official, visiting, limited, and permanent residence licenses, is required for all foreign nationals on Indonesian soil. (Pipit Mulyah, Dyah Aminatun, Sukma Septian Nasution, Tommy Hastomo, Setiana Sri Wahyuni Sitepu, 2020). The enforcement of legal sanctions against foreigners who do not have a residence permit is more through administrative actions and criminal sanctions. Criminal penalties for creating or falsifying visas or residency permits with the goal of using them to enter, exit, or live in Indonesia include five years in prison and a fine of Rp 500,000.00 (five hundred million).

Administrative measures include being placed on the preventive list, having one's residency permit changed, being prohibited from entering particular areas of Indonesia, being forced to live in specific areas of Indonesia, being assessed burden costs, and being deported from Indonesian territory (Muhlisa & Roisah, 2020). Law enforcement against foreigners without residence permits requires effective supervision from Immigration so that the functions of service, law enforcement, state security, and development facilitation are carried out. The imposition of sanctions in accordance with the rules is also important in order to provide a deterrent effect and a warning so that others do not do the same thing. Thus, strict sanctions will prevent immigration administrative violations by foreigners in Indonesia.

The categories of residency permits are governed by Law Number 6 Year 2011 on Immigration, as mentioned in paragraph 48:

- 1) All foreign nationals living on Indonesian soil must possess a stay permit.
- 2) Foreigners will be given a stay permit based on their visa.
- 3) The Stay Permit mentioned in paragraph (1) includes:
 - a. Permit for Diplomatic Stay
 - b. Permit for Service Stay
 - c. Permit to Visit
 - d. Permit for Permanent Residency

- 4) A foreign national who has been given a stay permit may be barred from residing in a certain area of the Indonesian territory by the minister.
- 5) The duties mentioned in paragraph (1) Explanation of Article 48 paragraph (2) do not apply to foreign nationals who are being held in custody for the purposes of an investigation, prosecution, and court examination, or who are being held in a correctional facility while their stay permit has expired. Basically, a visa is required for any foreigners entering Indonesian territory (Meliala, 2025) . A stay permit in the Indonesian territory will be issued to foreigners based on such visas; however, this provision will not apply to foreigners who are in the country as a result of being the victims of human trafficking. The term "certain area" in paragraph four refers to a combat zone that poses a threat to the existence, security, and safety of the foreign national in question (Marcelino; Rompas; Vecky, 2022).

A permit can also be understood as a dispensation, release, or exemption from a ban, whereas licensing is one way the government exercises its regulatory and control authority over community activities (Andrian Syaputra, 2023).

Article 49 paragraph of Law Number 6 Year 2011 on Immigration:

- a) Foreign nationals who enter Indonesian territory with a diplomatic visa are awarded a diplomatic stay permit (Ramadhani, 2021).
- b) Foreigners who visit Indonesian territory with a service visa are awarded a service stay permit.
- c) The Minister of Foreign Affairs is responsible for granting diplomatic stay permits, service stay permits, and extensions of these permits.

Article 50 paragraph:

1. The following people will receive a visit stay permit:
 - a) A visitor with a valid visa entering Indonesian territory.
 - b) A newborn in Indonesian territory who has a visitation stay permit from either the mother or the father at the time of birth.
2. In compliance with the visit stay permit of the mother and/or father, the visit stay permit mentioned in clause (1) letter b will be issued.

According to administrative law, a permit is a legal tool that the government uses to persuade people to take the suggested course of action in order to accomplish a specific objective. A permit serves as a spearhead or tool in the legal system that seeks to guide, regulate, engineer, and create a prosperous and just society. It is possible to see how the vision of a wealthy and just society is achieved through the permission, which indicates that the conditions outlined in the permit serve as the guidelines for how the permit operates.

The government's power to employ administrative sanctions under state administrative law is derived from both written and unwritten administrative law regulations (ARIDHO, 2024). Generally speaking, granting the government the power to create specific administrative law standards also grants the power to enforce such standards by imposing penalties on those who disobey them.

Thus, immigration control must be carried out in an integrated and well-coordinated manner so as to avoid inappropriate actions against foreigners. Excessive measures and

disregard for international customs that apply in practice between countries may lead to protests and may be viewed as an unfriendly act towards the foreigner's country of nationality

Conclusion

Overstaying is a major issue that is governed by Law No. 6 Year 2011 on Immigration, according to studies on the criminal culpability of foreign nationals who violate residence permits in Indonesia. The large frequency of immigration infractions in Indonesia is demonstrated by data indicating that around 130,000 foreigners were found to have breached their residence permits in 2023. According to Article 119 paragraph (1) of Law No. 6/2011, foreign nationals who violate the law may face administrative sanctions like deportation, inclusion on the prevention/deterrence list, and restriction or modification of their residency permit, as well as criminal penalties like up to five years in prison and a fine of up to IDR 500 million. The public and immigration officials share responsibilities for implementing immigration control, and Immigration Civil Servant Investigators (PPNS) work in tandem with the Indonesian National Police to investigate immigration-related crimes.

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