

## IMMIGRATION IN THE VIEW OF THE GATE GUARD OF THE STATE OF INDONESIA

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**Abstract.** This study aims to analyze the function of immigration in the security aspect, namely as a guard at the entrance to the territory of Indonesia during a pandemic. This function is of course very important considering that currently the spread of the covid 19 virus is getting out of control, one of which is because there are still many foreigners entering Indonesian territory. The research method used is descriptive with a qualitative approach by studying secondary data in the form of books, documents, and event records. The results of the study show that the actualization of the role of the immigration function during the pandemic can be seen from the aspects of immigration regulation and practices carried out by immigration checkpoints throughout Indonesia. Meanwhile, immigration checkpoints have carried out their functions as state security guards by refusing the arrival of foreigners and closing several immigration checkpoints to limit immigration traffic. There is a significant difference in law enforcement during normal times and during the pandemic, namely concessions given to foreign nationals in the form of exemption from overstay fees and deportation cannot be carried out. Deportation cannot be carried out because in general the country of origin of the foreigner also applies strict restrictions, so that for the time being many foreigners who cannot return to their country of origin are forced to live in the Rudenim.

**Keywords:** immigration; gatekeeper; Indonesia; Covid-19

### I. INTRODUCTION

Since the beginning of 2020, the world has been described as having a new virus, the Corona virus (Covid-19). This virus was first discovered in the city of Wuhan, China, which then spread to other parts of the world. This virus spread rapidly and uncontrollably until in January 2020 WHO announced and listed Covid-19 in the Public Health Emergency of International Concern and increased the status as a pandemic on March 11, 2020 [1]. As of September 11, 2020, globally, there were 27,738,179 cases of Covid-19 with a death toll of 899,916. The highest number of cases was recorded in the United States with 6,272,193 cases, with a death toll of 188,608 cases. Meanwhile, in Indonesia the number of cases as of September 11, 2020 was 203,342 cases with a total death toll of 8,336 [2]. Countries in the world have taken anticipatory steps to stop the spread of Covid-19 in their countries, one of which is by limiting visits abroad for their citizens and limiting the arrival of foreign nationals in their countries. Even some countries such as Italy have locked down and very strict restrictions on the activities of their citizens [3]. Efforts to prevent the spread of Covid-19 have also been carried out by the Indonesian government, one of which is the "Work, Learn and Worship from Home" movement. There are also quarantine measures with various facilities, isolation with various facilities, and social distancing. However, the movement was deemed insufficient and public concerns did not decrease. Various ideas emerged in line with the increasing number of positive corona in Indonesia. The idea of a lockdown that urges the government to implement a lockdown in several areas in

Indonesia as carried out by China, Italy, Spain, France, even Malaysia and the Philippines. However, with various considerations, finally on March 30, the Government of the Republic of Indonesia issued Government Regulation Number 23 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease (Covid-19).

Other efforts were also made by the government by prohibiting foreign nationals from entering or transiting Indonesian territory. The prohibition is contained in the Menkumham Regulation Number 11 of 2020 concerning the Temporary Prohibition of Foreigners from Entering the Territory of the Republic of Indonesia. This regulation is effective from April 2, 2020 until an indefinite time. The existence of a ban on entry for foreign nationals is the right step that can be taken by the government of the Republic of Indonesia. This is because Covid-19 is an innate virus, not an original virus. This virus is carried by foreign nationals who come to Indonesia, or Indonesian citizens who come from abroad [4]. Therefore, the official in charge of immigration must implement strict restrictions or even prohibitions on the traffic of people in and out of Indonesian territory [5].

The efforts made by immigration are one of the functions of immigration as national security guards [6]. Immigration here functions as a gatekeeper of the state because immigration is the first and last institution that screens the arrival and departure of foreigners to and from the territory of the Republic of Indonesia. [7] The implementation of this function is intended for prevention efforts as part of immigration action. The implementation of

security functions aimed at Foreign Citizens is (1) Conducting a selection of each foreigner's arrival intention through examination of visa applications[8]. (2) Cooperating with other state security apparatus specifically in providing surveys regarding immigration law enforcement. (3) Conducting immigration intelligence operations in the interest of state security. (4) Implement prevention and deterrence, namely a prohibition for a person to leave the territory of Indonesia within a certain period of time or a prohibition on entering the territory of Indonesia for a certain period of time.

The prohibition for foreign nationals to enter the territory of the Unitary State of the Republic of Indonesia is legally justified. However, what must be further considered is what about foreign nationals who are in Indonesia during the Covid-19 period, or if there are foreign nationals who have already entered Indonesia during the Covid-19 emergency period, considering that there are still many foreign workers in Indonesia. in Indonesia, especially foreign workers who come from China [9].

Related to this, can the immigration officer take immigration actions in the form of returning to the country of origin or suspending the residence permit of the foreign citizen? And then how is the responsibility of the state related to the differences of foreign nationals in the midst of the Covid-19 outbreak [10]. Therefore, it is necessary to conduct research on the actualization of the role and function of immigration as a guard at the entrance to the territory of the Unitary State of the Republic of Indonesia in an effort to maintain security from the Covid-19 pandemic and analyze the legal implications of law enforcement by immigration against foreign nationals who will enter the territory of the Unitary State of the Republic of Indonesia on during the Covid-19 pandemic. Because it is undeniable that even though the government has implemented a ban on entry for foreign nationals, a number of foreign nationals are still allowed to enter and stay in Indonesia.

## II. RESEARCH METHODS

This research is included in descriptive research with a qualitative approach which is also known as doctrinal law research. [11] This research is a descriptive study with a qualitative approach by studying secondary data in the form of books, documents, and records of events carried out against legal policies taken by the government in this case immigration officials in terms of efforts to prevent the spread of the Covid-19 pandemic. The actualization referred to in this study is the actualization or implementation of the duties and functions of immigration as described in the government's legal policy. This study focuses on studying immigration as a gateway for foreign nationals to enter the territory of the Unitary State of the Republic of Indonesia and legal action against foreign nationals during the Covid-19 emergency response period.

## III. RESULTS AND DISCUSSION

### *Indonesian Immigration*

Immigration in Indonesia is part of the realization of the implementation of the enforcement of sovereignty over Indonesian territory in order to maintain order in life based on Pancasila and the Constitution of the Republic of Indonesia. In the history of Indonesia, immigration activities have been manifested in the form of immigration checks that have existed since the Dutch colonial era. The colonial government agency called *Immigratie Diens* was an institution that at that time was in charge of handling immigration issues for the entire Dutch East Indies region [5]. Immigration from an open door policy that was enforced for the interests of the colonial government to a selective immigration law policy based on the national interest of the Indonesian government [9].

The Law of the Republic of Indonesia Number 9 of 1992 concerning Immigration was enacted as the legal basis for the implementation of Immigration Law in Indonesia until May 5, 2011, the Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration as a new amendment to the Immigration law in Indonesia as an adjustment in implementation of immigration in the era of globalization. Based on the understanding in the law, immigration is a matter of traffic of people entering or leaving the territory of Indonesia and its supervision in order to maintain the upholding of the sovereignty of the State [7]. From the explanation of the Immigration Law, it can be concluded that new policy directions for the implementation of immigration duties and functions. The background of the birth of this law is the rolling globalization that affects the sectors of people's lives and the development of technology in the field of information and communication that crosses state boundaries, aspects of humanitarian relations which have been international in nature, along with the growing and developing demands for the realization of a level of equality in aspects of life. humanity, encouraging the obligation to respect and uphold human rights as part of universal life [10].

The immigration law has an emphasis on various aspects, including Human Rights and Transnational Organized Crime. In the field of Human Rights, for example, every Indonesian citizen has the same right to enter and leave the territory of Indonesia, and there is no deterrence for Indonesian citizens. In the field of Transnational Organized Crime, Immigration has an important role in preventing transnational crimes such as trafficking in persons, people smuggling, and narcotics crimes which are mostly carried out by international syndicates. In the Immigration Law, which was previously a selective policy, it was changed to a selective policy that upholds human rights [12].

To implement the Immigration Law, the government issued Government Regulation No. 31 of 2013 concerning Implementing Regulations of Law No. 6 of 2011 concerning Immigration (PP No. 31 of 2013) which implementation still depends on the previous regulations as long as it does not

conflict with the law. government laws and regulations in the field of Immigration.

[13] From some of these explanations, the objects of immigration include two things, namely: (1) Traffic of people and (2) Immigration control. [14] Meanwhile, the subject of immigration includes two things, namely: (1) people entering and (2) leaving the territory of the Republic of Indonesia and foreigners residing in the territory of the Republic of Indonesia. [15] In addition, the Immigration function in its activities contains 4 main functions, namely as follows: (1) Community Service Function. (a) Immigration is required to provide excellent service in the field of immigration to both Indonesian citizens and foreign citizens. Services for foreign nationals consist of (b) Provision of Immigration Documents in the form of Limited Stay Permit Cards, Permanent Stay Permit Cards, special immigration facilities. (c) Extension of residence permit includes: Tourist visit visa, socio-cultural visit visa, business visit visa. (d) Extension of Immigration Documents includes Temporary Residence Permit Card, Permanent Stay Permit Card, DAHSUSKIM. (e) Granting re-entry permit, leaving permit (f) Giving departure and entry signs. (2) Law Enforcement Function. Law enforcement against Foreign Citizens is aimed at the problems of: (a) Falsification of the identity of Foreign Citizens. (b) Registration of foreigners and granting of foreigner control books. (c) Misuse of residence permit. (d) Entering illegally/being illegally. (e) Monitoring of raids. (f) Immigration vulnerability geographically in crossing. (3) Security Function. Immigration here functions as a gatekeeper of the state because immigration is the first and last institution that screens the arrival and departure of foreigners to and from the territory of the Republic of Indonesia. The implementation of this function is intended for prevention efforts as part of immigration action. The implementation of security functions aimed at foreign nationals is: (a) Selecting each foreigner's arrival intention through examination of visa applications. (b) Cooperating with other state security apparatus specifically in providing surveys regarding immigration law enforcement. (c) Conducting immigration intelligence operations in the interest of state security. (d) Implementing prevention and deterrence, namely a prohibition for a person to leave the territory of Indonesia within a certain period of time or a prohibition on entering the territory of Indonesia for a certain period of time. (4) Facilitator Function. This function focuses on economic development and the welfare of the Indonesian people. This is related to the licensing of foreigners who will invest in Indonesia with the aim of the welfare of the Indonesian people, especially Indonesia's economic development to make it easier.

#### *Actualization of the Role and Function of Immigration as a Guardian of the Entrance of the NKRI Territory in an Effort to Maintain Security from the Covid-19 Pandemic*

Referring to the previous explanation that there are 4 immigration functions, namely the community service function, law enforcement function, security function, and facilitator function. In connection with the Covid-19

pandemic, the immigration security function is a major concern. Immigration here functions as a gatekeeper of the state because immigration is the first and last institution that filters the arrivals and departures of foreigners to and from the territory of the Republic of Indonesia. The implementation of this function is intended for prevention efforts as part of immigration action.

The actualization of this function can be seen from the existence of restrictions or restrictions for foreign nationals to come to Indonesia as stipulated in the immigration checkpoints carried out based on the Regulation of the Ministry of Law and Human Rights 11/2020. Restrictions on people's traffic through 11/2020 which are valid from April 2, 2020 at 00.00 WIB until an undetermined time limit.

However, this prohibition of entry and transit rules has exceptions for a number of Foreign Nationals. They include, among others, those who have a limited stay permit card, a permanent residence permit card, holders of diplomatic residence permits and official residence permits. In addition, medical and food aid and support personnel; crew of transportation means both sea, air and land; as well as foreigners working on National Strategic projects are also allowed under certain conditions, including having a health certificate in English issued by the health authorities of each country and having been in a Covid-19-free region or country for 14 days..

Immigration checkpoints are carried out based on the Regulation of the Ministry of Law and Human Rights which also regulates regulations for foreigners residing in Indonesia. First, foreigners holding Visit Stay Permits (including visa-free visits and Visa on Arrival) whose residence permits have expired or cannot be extended, will be granted a forced stay permit automatically without the need to apply to the Immigration Office and free of charge. Then, foreigners holding Limited Stay Permits and Permanent Stay Permits that have expired or cannot be extended again, will be given a suspension and given a forced stay permit automatically without the need to apply to the Immigration Office and free of charge [16].

Immigration checkpoints are carried out based on the Regulation of the Ministry of Law and Human Rights 11/2020 which can be said to be an immigration policy in the Covid emergency period, where there is a shift in the normative immigration function as a guardian of sovereignty to a beneficial function [16], namely the existence of a selective immigration policy. [17]. Selective in this case is interpreted in terms of restrictions.

This selective policy is the implementation of the state's responsibility towards citizens and foreigners living in the territory of their country during a pandemic [18]. The state is responsible for the safety of citizens from outside interference, in this case a contagious virus. In addition, they are also obliged to protect the rights of foreigners who are in the territory of the Unitary State of the Republic of Indonesia.

Every foreigner who enters the territory of Indonesia cannot be separated from the legal rights and obligations attached to him as stated in the Universal Declaration of



Human Rights [19]. Not all rights contained in the Universal Declaration of Human Rights must be fulfilled against foreigners who are in a state jurisdiction, one of which is the right to participate in government, so that only certain rights must be respected, fulfilled, and protected by the destination country. the foreigner.

Even though there are strict restrictions on foreigners who will enter Indonesian territory, the immigration policy during the pandemic also cannot be separated from the state's responsibility to protect the rights of foreigners who are in Indonesian territory during the pandemic. This responsibility is actualized in Circular Number: IMI-GR.01.01-1102 of 2020 concerning Immigration Stay Permit Services in the New Normal Order, which basically is to provide convenience for foreigners to obtain residence permits as long as the foreigner cannot return to the country. originally due to restrictions. The actualization of the role and function of immigration during the pandemic is not only seen from the aspect of immigration arrangements in an emergency period but also the practices carried out by immigration checkpoints throughout Indonesia. There are 182 Immigration Checkpoints in Indonesia which serve as entry and exit points, Indonesia's sovereign territory consisting of: 37 Airports, 90 Seaport Immigration Checkpoints, 11 International Cross-Border Post Immigration Checkpoints, and 44 Traditional Cross-Border Post Immigration Checkpoints [20]. From the Immigration Checkpoints, Indonesian immigration has rejected 242 foreigners who will enter Indonesian territory [20]. In addition, as a preventive measure, the government has also temporarily closed several Immigration Checkpoints or Cross-Border Posts to prevent the spread of Covid 19.

Table 1. List of Immigration Checkpoints Closed During the Covid-19 Pandemic

No	Immigration Checkpoint	Information
1	Skow . International Border Post	It has been closed since 31 Jan 2020 at the request of PNG State
2	Miangas International Border Post	It has been closed since Feb 2020 at the request of the Philippines
3	Marore International Border Post	It has been closed since Feb 2020 at the request of the Philippines
4	Nunukan International Border Post	It has been closed since March 18, 2020 at the request of the State of Malaysia
5	Bandar Sri Setia Raja Seaport	It has been closed since March 21, 2020 based on a letter from the Head of the Bengkalis Regency Transportation Service dated March 20, 2020 regarding the Notification of the Closure of the Port of Bandar Sri Setia Raja Selatbaru Bantan
6	Dumai Seaport	It has been closed since March 21, 2020 based on the letter from the Head of the Dumai City Transportation Service Number 500 DISHUB 225 dated March 20, 2020 regarding Notification of Port closure
7	Sri Bintang Pura Seaport	It has been closed since March 23, 2020
8	Bandar Seri Udana Lobam Seaport	It has been closed since March 12, 2020
9	Teluk Nibung Sea Port	It has been closed since March 19, 2020 to March 31, 2020
10	Cape of Good Hope	It has been closed since March 27, 2020 based on the Circular of the Head of the Harbormaster Office and the Selatpanjang Port Authority dated March 27, 2020 concerning Provisions for Departure for Passenger and Goods Ships and Overseas Against Efforts to Prevent and Spread the Corona Virus (COVID-19) in the Port Work Area Long Strait

11	Ports in NTT . Province	Based on a letter from Republica Democratica De Timor Leste No. AU 05 2020PLB dated April 03, 2020 which states that NTT only opens exit entry points on Wednesdays at 10.00 to 12.00 WIB
12	Ports in West Kalimantan Province	It has been closed since April 24, 2020 based on the letter from the Governor of West Kalimantan dated April 24, 2020 regarding the Closure of the PLBN for the entry of Indonesian citizens from Sarawak Malaysia except for residents of West Kalimantan. However, based on the provisions of Article 14 paragraph 1 of Law Number 6 of 2011 that every Indonesian citizen cannot be refused entry into Indonesian territory so that the RI-Malaysia exit entry point is only opened to (1) Indonesian citizens who come from Malaysia and (2) Malaysian citizens who will return to Indonesia. country.

Source: Directorate of Immigration Traffic, 2020

The government's policy to limit the entry and exit of citizens is a shift in the function of immigration during the pandemic. Initially, the function was as an entrance guard aimed at facilitating the traffic of people, but in this pandemic period the immigration function is more of a state security guard by implementing a ban, which was initially allowed to become illegal, which was initially allowed to become illegal. Thus, during this pandemic period, the actualization of the role of immigration does not only emphasize the normative aspect but also on the usefulness aspect, namely maintaining the safety of all Indonesian citizens from the spread of Covid 19.

#### Implications of Law Enforcement by Immigration for Foreign Citizens Entering the Territory of the Republic of Indonesia during the Covid-19 Pandemic

The function of law enforcement in immigration is a legal action taken by immigration related to a violation of immigration provisions. Immigration law enforcement can be seen from two aspects, namely preventive law enforcement and repressive law enforcement [21]. Preventive law enforcement is carried out by immigration intelligence who supervises so that violations do not occur. Meanwhile, repressive law enforcement is carried out by implementing immigration administrative measures and immigration investigations, for example in the case of foreign citizens who overstay.

The implementation of immigration law enforcement during the Covid 19 emergency underwent changes to adapt to the new normal order. First, in the aspect of supervision, supervision is carried out on a limited basis following changes in the working hours of immigration employees. Supervision of companies, residences and others has begun to be limited, monitoring is waiting for reports from the public. During the pandemic, the trend of immigration violations decreased along with the limited space for movement in and out of Indonesian territory.

Second, in the aspect of immigration administrative actions, there is leniency for several violations, including foreign nationals not charging overstay fees and delays in deportation. SR.04.03/II/6689/2020 concerning the Implementation of Air Transportation in the Context of Preventing the Spread of Covid-19 to temporarily suspend from and to Indonesia via aircraft. Thus, practically foreign nationals cannot return to their home countries during the Covid 19 emergency. Third, in the aspect of immigration investigations, until now there are no rules or Standard Operating Procedures that specifically regulate immigration

investigations during the pandemic. As a result, foreign nationals who have been found guilty cannot be deported.

Another problem in implementing immigration laws during the pandemic is related to immigration detention houses. There is not yet an adequate Standard Operating Procedure regarding the implementation of law enforcement and protection within the Rudemin. So far, Rudemin has followed general health protocols, such as spraying disinfectants, hand sanitizers and rapid tests for detainees. However, this cannot be done continuously given the limited budget for the Rudemin. In addition, the Rudemin not only handles troubled Foreign Citizens but also immigrants and refugees who cannot return to their home countries, so that Rudemin residents are increasing while the management pattern of Rudemin is still conventional.

#### IV. CONCLUSION

The actualization of the role and function of immigration during the pandemic can be seen from the aspects of immigration regulation and practices carried out by immigration checkpoints throughout Indonesia. The actualization of the security function can be seen from the existence of restrictions or restrictions for foreign nationals to come to Indonesia as regulated in Permenkumham 11/2020. Meanwhile, foreign nationals have carried out their functions as state security guards by refusing the arrival of foreigners and closing several TPIs to limit immigration traffic. Immigration law enforcement during the Covid emergency period will still be carried out by adjusting to the new normal system. There is a significant difference in law enforcement during normal times and during the pandemic, namely concessions given to foreign nationals in the form of exemption from overstay fees and deportations. Foreign nationals who cannot be transported due to their home country undergoing a lockdown are placed in the existing Rudemin. However, this is still a problem because there is no Rudemin Standard Operating Procedure during the covid period and the existing budget constraints.

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