

The Immigration Crime and Policy: Implementation of PPNS Authorities on Investigation

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TABLE *of* CONTENTS

INTRODUCTION	176
GENERAL OVERVIEW <i>on</i> LAW ENFORCEMENT <i>on</i> IMMIGRATION CASES <i>in</i> INDONESIA	179
THE ROLE <i>of</i> IMMIGRATION CIVIL SERVANT INVESTIGATORS <i>in</i> INVESTIGATING IMMIGRATION CRIME ACCORDING <i>to</i> LAW NUMBER 6 <i>of</i> 2011	183
THE OBSTACLES FACED BY PPNS <i>of</i> IMMIGRATIONS <i>on</i> CONDUCTING IMMIGRATION CRIMES INVESTIGATIONS ..	189
CONCLUSION	191
REFERENCE	192



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Abstract

*Immigration crime and criminal law are one of the interesting studies not only seen in terms of law enforcement but also criminal law politics and authority arrangements in immigration. For Indonesia, the problem of immigration is a challenging problem, not because it is only the location of Indonesia that is vast and has many access points for immigrants, but also the authority between institutions. Article 105 of Law Number 6 Year 2011 on Immigration, states that the Immigration Civil Servant Investigator is authorized as an Immigration criminal investigator conducted in accordance with the provisions. The results of this study are: (1) enforcement of immigration law conducted one of them with the investigation of perpetrators of violations of the Immigration Act. The process of investigating the perpetrators of violation of Immigration Law is based on the provisions of the Criminal Procedure Code as *lex generalis* and Immigration Law as *lex specialis*. In this research, law enforcement has been carried out in order to participate in trading fake immigration/passport travel documents by providing unauthorized data or incorrect information to the Immigration officer to obtain travel documents of the Republic of Indonesia for himself, (2) in implementing immigration law enforcement function there are still obstacles faced Immigration Civil Servant Investigator include low knowledge, lack of operational fund, lack of public participation in reporting the existence of foreigner in their environment, weakness of coordination with other law apparatus and obstacle from law factors.*

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INTRODUCTION

THE increasing information and transportation technology today has led to an increase in migration flows between countries that can have positive and negative impacts. Positive impacts include the modernization of society and encouraging economic growth of a country, the negative impact of migration

flows is the emergence of immigration criminal acts such as people smuggling (Syahrin 2017; Francis and Maguire 2016; Kosandi, Subono, Susanti and Kartini 2017),¹ forgery of immigration documents and abuse of immigration permits (Gonzalez, Collingwood, and El-Khatib 2017).² Even today immigration crimes are more developed than those that are not organized into an organized crime (Santoso 2004; Adelman, Reid, Markle, Weiss and Jaret 2017). In terms of maximizing the positive impact and minimizing the negative impacts of migration flows to and from the Indonesian territory, good immigration law enforcement is needed and capable of providing a deterrent effect for immigration criminals, thereby reducing the negative impact of migration flows.

Lately the mass media often presents coverage on the rampant smuggling of people, the sale of babies abroad (Mcnevin, Missbach, and Mulyana 2016)³, forgery of passports and visas, citizenship problems, abuse of immigration permits and various types of transnational crimes which are all classified as immigration. At the Soekarno-Hatta Class I Immigration Office as an Immigration Examination Place (TPI), violations and crimes in the immigration sector are often found, but unfortunately there are still many cases that arise that cannot be appointed to the court level. Broadly speaking, this is due to the high choice of the administrative action process of the organizational structure that has not supported the investigation of immigration crimes and lack of coordination between police investigators and Civil Service Investigators (PPNS) in the Immigration field. So that the act of investigation as law enforcement in the field of immigration is still not an option even though Law Number 6 Year 2011 concerning Immigration has regulated criminal provisions and enforcement of criminal law by referring to Law Number 8 of 1981 concerning Criminal Law Procedure (Ihsan 2016).

The process of investigating alleged immigration crimes is a series of investigator's actions to find and collect evidence, with evidence that makes it clear about the alleged immigration crime that occurred and in order to find the suspect, in terms of and according to the method stipulated in the Criminal Procedure Code (Directorate General of Immigration 1995). The authority to investigate the alleged immigration crime is not only carried out by the Indonesian Police Investigators but also by Immigration Civil Servant Investigators who are specifically authorized as investigators as referred to in Article 6 paragraph (1) letter b of the Criminal Procedure Code, namely certain Civil Servants Officials given special authority by law which becomes their legal basis. Plus the public's understanding of immigration crime is still

¹ In the same context, the people smuggling is close to immigration criminal cases.

² The cases of immigration, as well as refugee, in many cases related to the document, including abuse of immigration permit.

³ This context, explained that control and management in immigration is very important thing not only to maintain but to prevent, protect the basic rights of human, and provide legal justice and certainty.

lacking. So far, the understanding of immigration crime has not been too popular in the community.

But the problem is a little different nowadays (Ozden *et.al.* 2016),⁴ where reforms are being carried out and the process of completing the practices of corruption, collusion, nepotism and other law violations is becoming a phenomenon awaited by the public, with the conditions in the field of immigration crime increasingly prevalent. Measures to eradicate immigration crime have been carried out by the government for many years, including changing and adding regulations on immigration offenses. However, all efforts made are still not as successful as expected.

In view of the legal awareness of the community at this time the legal awareness of the community to obey or comply with legal regulations in the field of immigration is still weak. In terms of criminal law, the task of eradicating immigration crimes is the duty of law enforcers who use legal means, the authority to investigate immigration crimes was previously carried out by the Indonesian National Police (Polri) but the immigration crime continues.

The lack of understanding of immigration crime has a negative impact on the application of regulations regarding immigration crime, so that in the implementation there are still gaps where in the implementation of immigration criminal investigations it is possible to have three settlement investigations (Ihsan 2016), namely:

1. Immigration crime is handled by two investigators so that there are two case files for the same case;
2. Immigration crime is handled by one of the investigators;
3. Immigration crimes are not handled because each investigator hands off.

Immigration Civil Servant Investigator is an investigator authorized to carry out an investigation into Immigration crime according to Law No. 6 of 2011. As an investigator authorized to handle immigration criminal acts has a heavy duty to be able to handle immigration crime this is due to the dualism of understanding contained in Law No. 6 of 2011, concerning investigators authorized to handle immigration crime, plus public understanding of immigration crime that is still lacking so that it demands an increase in the capability and professionalism of Immigration Civil Servant Investigators. Immigration PPNS in carrying out their duties in the Immigration field other than subject to Law No. 6 of 2011 also complies with Law Number 8 of 1981 concerning Criminal Procedure Law and other laws and regulations. Therefore, Muladi (1995) emphasized that there is a need for synchronization⁵ in enforcing criminal law in the Indonesian criminal justice system.

⁴ In the thesis of Caglar Ozden *et.al* emphasized that in some cases, immigration case affect some crimes not only related to immigration crimes, but other crimes.

⁵ According to Muladi, synchronization or simultaneously in structural terms (structural synchronization), substantial (substantial synchronization) and can also be cultural (cultural synchronization).

In its development, Three Immigration Function can be said to experience a shift that the notion of functions of security and law enforcement is an integral part because the application of law enforcement in the immigration field means the same or identical to creating conducive security conditions and vice versa in order to maintain conducive security conditions. Automatic immigration law enforcement functions must be carried out continuously and consequently. While the new function, namely as a facilitator of development is an integral part of other immigration functions (Santoso 2004).

Civil Servant Investigators (PPNS) at the Immigration Office have a very important duty and role in the effort to deal with immigration crimes that aim to eradicate immigration crime. However, this task and authority in its implementation often encounter obstacles both from legal regulations governing immigration crime and often the authority collides with the authority possessed by law enforcement agencies such as police investigators.

GENERAL OVERVIEW *on* LAW ENFORCEMENT *on* IMMIGRATION CASES *in* INDONESIA

ACCORDING to normative studies, law enforcement is an action to apply the law to an event, which can be likened to drawing a straight line between two points. In law, this method is referred to as an automatic engine model and the work of enforcing the law becomes an automatic subsidy activity. Here law is seen as a clear and definite variable and looks very simple. In reality it is not that simple but what happens is that law enforcement contains choices and possibilities, because it is faced with a complex reality. In normative law, complexity is ignored, whereas legal sociology as empirical science can by no means ignore it (Raharjo 2002).

Meanwhile, in conceptually, Soekanto (1980) stated that the core and meaning of law enforcement lies in the activities of harmonizing the relationships of values outlined in solid and manifesting rules and actions as a series of final stages of value translation, to create, maintain and maintain social peace of life. Furthermore, according to Soekanto, so that law enforcement can run at least four factors must be fulfilled.

1. The rule of law or regulation itself;
2. Officers who implement or enforce;
3. Facilities that are expected to be able to support the implementation of legal procedures;
4. People affected by the scope of the regulation.

The four factors must have a harmonious relationship and the lameness of one element will result in the entire system being negatively affected. Satjipto Raharjo argues that the elements involved in the law enforcement process are divided into two major groups, namely elements that have a degree of involvement that is rather far and close. An example of an element that has close involvement with the law enforcement process is the

legislature or legislator and police, while the personal and social elements have far-reaching involvement (Raharjo 2002).

According to Satjipto Raharjo, law enforcement is a process to realize legal wishes into reality. What is referred to as legal desires here are the thoughts of the legislature formulated in the legal regulations. The success of the law enforcement process is very dependent on law enforcement official itself (Raharjo 2002). Law enforcement seen from a normative perspective is indeed a very simple problem, but when viewed from a sociological perspective, law enforcement is a long process and is a struggle, as stated by Arief (2001), that law enforcement and justice is a series of processes that are quite long and can involve various authorities of other law enforcement agencies (in the field of criminal law enforcement involving investigating/police officers, prosecutors' public prosecutors, court officials, and criminal implementing apparatus).

Furthermore, Marpaung (1997) explained that law enforcement did not take place in a vacuum or social vacuum. What is meant by social emptiness is the absence of outside legal processes that simultaneously take place in society. These processes are like economics and politics. Law enforcement takes place in the midst of these processes. With the issuance of the Law, for example, it will not immediately become exactly what the law requires. Competitive relations, attraction and push to push between the law and other fields and processes outside it still occur.

In line with what was stated by Leden Marpaung, Marc Galanter also emphasized that law enforcement was not as simple as we thought, but rather that law enforcement contained choices and possibilities, because it was expected to be a complex reality (Raharjo 2002). In normative law complexity is ignored, whereas as empirical science cannot ignore it. Legal sociology departs from the reality in the field, which is to see the various realities, complexities that exist in society and how they form the intention by looking at the law from the "other end of the telescope". Because of incorporating this complexity into its understanding and analysis, in legal sociology, law enforcement is not universally logical, but rather a variable.

The importance of the elements contained in the law enforcement process seems to play a dominant role, as Stewart Macaulay's research on the enforcement of contract laws that have been self-made by the perpetrators is largely excluded, business relations between actors are not always based on contracts that have been made by yourself. Relationships that are supposed to be contractual but have turned out to be non-contractual, because it turns out that non-contractual nature is more beneficial for both parties in conducting business relations (Raharjo 2002).

Furthermore, according to Muladi, law enforcement is an effort to uphold norms and at the same time the values behind the norm. For this reason, law enforcers must fully understand the spirit of the law that underlies the making of the legal regulations to be enforced (Muladi 1995). Law enforcement officials must realize that law enforcement as a sub-system of a

broader system is vulnerable to environmental influences, such as the influence of political developments, economics, education, and globalization. Therefore, understanding or the need for togetherness and collaboration between components described as a system approach in the criminal justice system should be implemented in each component or law enforcement apparatus. The criminal justice system is a system in a society to tackle the problem of crime. The components in the criminal justice system are expected to work together to form what is known as integrated criminal justice administration (Reksodiputro 1994).

Romli Atmasasmita in this case also underlined that the criminal justice system means interconnection between the decisions of each relevant institution in the criminal justice process. In other words, the criminal justice system, in which there is a systemic movement of its supporting subsystems (as stated above), which as a whole seeks to transform inputs into outputs that are the objectives of the criminal justice system, namely the term goals short in the form of re-socialization of actors, medium term is prevention, and long term is social welfare (Atmasasmita 1996). To achieve these goals, according to Muladi, the criminal justice system is strongly influenced by the community environment and the areas of human life. Therefore, the criminal justice system in its motion will always experience interaction, interconnection, and interdependence with its environment in the fields of economics, politics, education, technology, and subsystems of the criminal justice system (Atmasasmita 1996).

Then furthermore, related to the enforcement of immigration law, in the Decree of the Minister of Law and Human Rights of the Republic of Indonesia No. M.04.PR.07.10 dated 7 December 2005 concerning the Organization and Work Procedure of the Department of Law and Human Rights of the Republic of Indonesia that the Sub Directorate of Immigration Investigation is under the Directorate of Immigration Investigation and Enforcement within the Directorate General of Immigration. The sub-directorate of Immigration Investigation oversees three sections, namely: Region I Investigation Section, Region II Investigation Section, and Immigration Civil Servant Investigator Section. The sub-directorate of investigation is led by a Chief, who is as close to echelon III (III / a) and for the section-section led by the Head of the same level as Echelon IV (IV / a). In carrying out the duties, section heads are responsible to the Head of the Immigration Investigation Sub-Department. While the Head of the Investigation Sub-Directorate is directly responsible to the Director of Immigration Investigation and Enforcement who leads the Directorate of Immigration Investigation and Enforcement where the position is equal to Echelon II (II/a).

While the authority of the Immigration Investigation Sub-Directorate is related to the preparation of materials for drafting policies, conducting guidance and technical guidance in the field of Immigration Criminal

Investigations and Immigration Civil Servant Investigators, and conducting investigations. Regarding the requirements for the appointment and appointment of PPNS, it is regulated in Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. Article 2 paragraph (1) letter b of the Government Regulation stipulates that the investigator is: "Certain PPNS which have at least the Level I Young Regulator (Group II/b) or are equated with it". In paragraph (5) it is determined that the PPNS is appointed by the Minister of Law and Human Rights at the suggestion of the department in charge of the civil servants.

The main tasks and functions of the Sub-Directorate of Immigration Investigation based on Article 610 of the Decree of the Minister of Law and Human Rights of the Republic of Indonesia No. M.03.PR.07.10 dated 7 December 2005 concerning the Organization and Work Procedure of the Ministry of Law and Human Rights of the Republic of Indonesia, clearly written the main tasks of the Sub-Directorate of Immigration Investigation. The main tasks of the Sub-Directorate for Immigration Investigations are:

1. Preparation of policy drafting;
2. Guidance and technical guidance in the field of immigration criminal investigation;
3. Investigator of Civil Servants in the field of immigration; and
4. Investigation of immigration crime.

In carrying out the above main tasks, the Sub-Directorate of Immigration Investigation functions:

1. Guidance and technical guidance in the field of immigration crime and immigration PPNS investigation;
2. Investigation;
3. Preparation of materials for preparing draft policies.

Regarding the position of Immigration Civil Servant Investigators as part of law enforcement institutions, the rationale for Civil Servants to become Civil Servant Investigators must fulfill the requirements specified in the Regulation of the Minister of Justice Number: M-05.PW.07.03 of 1984 concerning Appointment of Appointments and Dismissal of Civil Servant Investigators as mentioned in Article 1, namely:⁶

1. Civil servants have the lowest rank of Level 1 Young Regulators (group II / b) who work in the field of investigation in accordance with the Law which becomes their respective legal basis;
2. Education as low as a High School or specially educated in the field of investigation or specifically in the field of operational technical or at least 2 (two) years experiences in the operational technical field. In the appointment the priority is for civil servants who attend special education in the field of investigation;

⁶ Article 1 Regulation of the Minister of Justice of the Republic of Indonesia No. M-05.PW.07.03 of 1984 concerning Implementation Guidelines for the Appointment and Dismissal of Civil Servant Investigators, Jakarta, 1984.

3. The Evaluation List for the Implementation of Civil Servants' Work (DP3) for 2 (two) consecutive years must be filled with good and able-bodied values stated by the doctor's statement.

Then after the Civil Servants are appointed as Investigators of Civil Servants assigned to enforce criminal law regulations, as explained by Rummelink (2003) which include:

1. Orders and prohibitions on violations against them by organs declared to be authorized by law are related to (threat) criminal; norms that must be obeyed by anyone too;
2. Provisions stipulating what facilities can be utilized as a reaction to violations of penitentiary legal norms or more broadly, namely the law on sanctions and rules that are temporally or within a certain period of time set limits on the scope of work of the norms. That way, criminal law should be aimed at enforcing legal order and protecting the legal community.

THE ROLE *of* IMMIGRATION CIVIL SERVANT INVESTIGATORS *in* INVESTIGATING IMMIGRATION CRIME ACCORDING *to* LAW NUMBER 6 *of* 2011

1. Enforcement of Immigration Law: What should be done?

Friedman and Hayden (2017) argued that the effectiveness and success of punishment depends on the reality of law enforcement. This is very much related to the legal elements, namely the structure of law (structure of the law), legal material (substance of the law), and culture of law (legal culture) in society. The legal structure concerns law enforcement officers, then legal material includes the legislation, and legal culture is the living law adopted in a society, about Friedman's legal structure explaining:

To begin with, the legal system has the structure of a legal system consist of elements of the kind, the number and size of court; their jurisdiction..., structure. Also means how the legislative is organized..., what procedures the police department follow, and go on, structure is a way is a kind of cross section of a legal system... a kind of still photograph, with free the action.

This means that the structure of the legal system consists of the following elements, the number and size of the court, its jurisdiction (including the types of cases they examine), and procedures for appealing from other courts to courts. The structure also means how the legislature is organized, what may and may not be done by the President, what procedures are followed by the police and so on. So the legal structure consists of existing legal institutions intended to carry out existing legal instruments. An understanding of legal substance is as follows:

Another aspect of the system is this substance. By this means the actual rules, norms behavioral patterns of people inside the system ... the stress here is on living law not just rules in law goods (Friedman and Hayden 2017).

Another aspect of the legal system is the substance. What is meant by substance is the rules, norms and patterns of real human behavior in the system. So the legal substance concerns the applicable laws and regulations that have the power that binds and becomes a guideline for law enforcement officers. In addition to the need for synchronization in the structural and substantial terms between Civil Servant Investigators and Police Investigators, in conducting investigations it is also necessary to have coordination. According to Ricky W. Griffin, mentioning the meaning of coordination is "coordination is the process of the activities of the various departments of organization" (Griffin 1987).

The legal system and coordination are closely related to the enforcement of immigration law, which is reflected as follows:

- a. Law enforcement in the field of immigration according to Law No. 6 of 2011 and Law No. 8 of 1981 seen in normative juridical aspects, and;
- b. Law enforcement in the field of immigration by looking at the empirical juridical aspects of the structure of immigration law enforcement and the culture of immigration law enforcement.

Immigration crime continues and can disrupt security and order stability, even though Law No. 6 of 2011, the lack of care of the public about the notion of immigration crime is a challenge for PPNS Immigration in enforcing the law and combating immigration crime. The nature of immigration itself is a series of activities in the provision of services and law enforcement as well as safeguarding the traffic in and out of people from and into the territory of the Republic of Indonesia operationally the immigration role can be translated into concepts of the Three Immigration Functions (Syahrin 2018; Wahyuddin 2018; Ousey and Kubrin 2018). This concept would like to state that the immigration system, whether viewed from the culture of immigration law, legal material (legal regulations) on immigration, immigration law facilities and infrastructure, must always contain Tri Functions, namely:

1. The function of community service. The function of administering government or state administration that reflects aspects of service, from that aspect immigration is required to provide excellent service in the field of immigration to both Indonesian citizens and foreigners;
2. The function of law enforcement. In carrying out immigration duties, the entire immigration law is enforced to everyone who is in Indonesian jurisdiction, whether Indonesian citizen or foreign national. Operationally the law enforcement carried out by Immigration institutions also includes the refusal to grant entry permits, leave permits,

- immigration permits, all of these are forms of investigative law enforcement, namely the authority to conduct immigration criminal investigations; and
3. Security function. Immigration functions as the guardian of the gates of the country, said so because Immigration is the first and last institution in screening the arrival and departure of people in and out of the territory of Indonesia. The implementation of security functions addressed to foreigners is:
 - a. Selection of every intention of the arrival of foreigners through checking visa applications;
 - b. Collaborating with other state security apparatus, especially providing supervision regarding enforcement of immigration law;
 - c. Carry out intelligence operations for the benefit of state security; and
 - d. Carry out prevention and deterrence.

Related to the duties and functions of investigators of immigration civil servants, Article 105 of Law No. 6 of 2011, states that the Immigration Officer Civil Servants (PPNS) is authorized as an immigration criminal investigator carried out in accordance with the provisions of this Act. PPNS is given special authority as an investigator as referred to in Law No. 8 of 1981 to conduct immigration criminal investigations. In accordance with the provisions of Article 107 of Law No. 6 of 2011 that in conducting an investigation, the Immigration PPNS coordinates with the Indonesian National Police Investigator, the form of coordination and supervision is stated in Article 107 paragraph (1), paragraph (2) and paragraph (3) of the Criminal Procedure Code, namely:

Article 107 paragraph (1)

For the purposes of investigation, the Republic of Indonesia Police Investigator provides instructions to Civil Servant Investigators and provides necessary investigative assistance.

Article 107 paragraph (2)

Civil Servant Investigators report to the Indonesian National Police Investigator about a criminal offense being investigated, if from the investigation by Civil Servants there is strong evidence to file a criminal offense against the public prosecutor.

Article 107 paragraph (3)

If a civil servant investigator has finished conducting an investigation, the results of the investigation must be submitted to the public prosecutor through the Indonesian Police Investigator.

The Immigration Civil Servant Investigator has authority in accordance with the law which is the legal basis and in his duties is under the coordination and supervision of the National Police investigator. Immigration actions cover four aspects of activities, namely:

1. *Processing the results of supervision and/or investigation.* The findings of violating the law resulting from supervision and evidence of investigation, processing and sorting according to the nature and type of violation, to determine the appropriate immigration action against the lawbreaker.
2. *Examination.* Examining suspects, sanctions and evidence of the results of supervision by making an official report. Whereas the results of investigations and cases that have received a verdict and are of permanent legal force, no need for further examination, only identification of former convicts is required by referring travel documents. Letters or other documents and judges' decisions, so that they are not mistaken in implementing immigration actions.
3. *Enforcement.* Carry out an administrative legal action against people who do not obey the rules and or carry out activities that are harmful to security and public order, consisting of:
 - a. Indonesian citizens, in the form of block, refusal to leave the territory of Indonesia, revocation and other matters relating to travel documents of the Republic of Indonesia;
 - b. Foreigners, in the form of blockage, refusal to enter and enter Indonesian territory, expense of expenses, deportation, quarantine, restriction / cancellation / change of permit of existence, prohibition of being in one or several places, the necessity of residing in a certain place;
 - c. The person in charge of transport equipment, in the form of: expense of expenses, bringing back foreigners who are not given permission to enter, foreigners who are not given entry permits to remain or be isolated on transport equipment.
4. *Completion and submission of case files* is the final activity of the immigration criminal investigation process. As a basis for considering the settlement and submission of case files is the result of examination of suspects and expert witnesses and their completeness has fulfilled the elements of immigration crime. Case settlement activities consist of:
 - a. Making a resume. Making a resume is an Immigration PPNS activity to compile summaries and conclusions based on the results of an investigation into an immigration crime that occurred.
 - b. Preparation of the contents of case files.

In conducting an investigation, the Immigration PPNS is legally responsible for the acts of investigation carried out in accordance with applicable laws and regulations while official responsibilities are carried out hierarchically in this case the Director General of Immigration can provide guidance, direction and support for investigative activities in the context of

conducting investigative duties immigration crime. Immigration PPNS is also required to coordinate with relevant government agencies and agencies in carrying out the supervisory duties on the activities and presence of foreign citizens, including the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Department of Defense and Security, the Ministry of Manpower, the Attorney General's Office and even with the State Intelligence Agency (BIN) (Atmasasmita 1997-1998).

The provisions of the enforcement of criminal law in the field of immigration have two ways of resolving immigration criminal acts, namely through immigration actions and through judicial pros. Violations and crimes in the field of immigration must be prevented and eradicated through law enforcement in the field of immigration. In formal juridical immigration is any act that violates immigration regulations in the form of crimes and violations that are threatened with criminal penalties as stated in Law No. 6 of 2011 which explains the provisions of immigration crime in the form of crimes and immigration criminal acts in the form of violations, namely for immigration crime regulated in Article 113 to Article 136 of Law No. 6 of 2011.

2. Investigation by Immigration Civil Servants in Case of Violating Immigration Law with Suspect Kou Tsung Teng

a. Knowing Criminal Acts

Based on the theory, there are several ways investigators know of a crime, which includes:

- 1) Report
- 2) Complaints
- 3) Self-Known by Investigators
- 4) Media coverage

In the case of violating the Immigration Act with the suspect Kou Tsung Teng, Immigration Civil Servant Investigators (PPNS) learned of a violation of the Immigration Act.

b. Case Brief

On Monday, November 21, 2011, where Kou Tsung Teng had submitted a passport issuance application on his own behalf, attaching data as administrative requirements in the form of KTP, Family Card, Birth Certificate in the name of Herry, and Marriage Deed on behalf of Willi and Marshanda . Based on the above, the investigator was suspicious of the validity of the documents submitted by Kou Tsung Teng, then the investigator conducted a more intensive examination of Kou Tsung Teng, and in the investigation found the fact that Kou Tsung Teng was a foreign national, a citizen of Taiwan as evidenced by the Taiwan National Passport Number: 303672531 which Kou Tsung Teng showed to the Immigration Office. Based on the foregoing, because the documents submitted by Kou Tsung Teng were alleged to be fake or falsified, Kou Tsung Teng still held a passport, so Kou

Tsung Teng was subject to immigration administrative measures, in this case the deportation of Kou Tsung Teng. And while waiting for the deportation process against Kou Tsung Teng, the Central Jakarta Immigration Office places Kou Tsung Teng in the Central Jakarta Immigration Office I Detention Room based on the Determination Order Number: W7.FC.GR.01.02.04-12,412 November 21, 2011 and Minutes of Determination on November 21, 2011.

That furthermore because the implementation of repatriation (deportation) of Kou Tsung Teng to his home country will be carried out, the Immigration Office has issued Kou Tsung Teng from the Detention Room based on the Decree of Expenditure Expenditure Number: W7.FC.GR.01.02.10.4 dated November 25 2011 and the Minutes of Expenditures from the Detention Room on November 25, 2011. Furthermore, Kou Tsung Teng was released from the Detention Room on November 25, 2011, but based on an intensive examination of Kou Tsung Teng who was allegedly committing a criminal act as regulated and threatened with crime according to the provisions of Article 126 letter c Law No. 6 of 2011 concerning Immigration Jo Article 55 of the Criminal Code, for the purpose of further examination issued an Investigation Order Number: 01/SPP/IX/2011/DIKKIM dated November 25, 2011, and the Immigration Office has subsequently arrested Kou Tsung Teng based on the Letter Arrest Order Number: 02/SPKAP/XI/2011/DIKKIM dated November 25, 2011.

Whereas in the examination of Kou Tsung Teng, Immigration has found several evidences that were suspected of being fake or falsified, among others in the form of KTP, family card, birth certificate in the name of Herry, and marriage certificate in the name of Willi and Marshanda, as well as objects directly related with a criminal offense allegedly committed by Kou Tsung Teng in the form of a Taiwan National Passport Number: 303672531 in the name of Kou Tsung Teng. So it should be suspected that Kou Tsung Teng had committed immigration criminal acts based on the provisions of Article 126 letter c of Law No. 6 of 2011 jo. Article 55 of the Criminal Code. Therefore the Immigration has confiscated the evidence, namely based on the Confiscation Order Number: SP2B2/01/XI /2011/DIKKIM dated November 25, 2011 with the Minutes of Confiscation on November 25, 2011.

That in addition to the above description along with the inspection process, it was also found the fact that Kou Tsung Teng's residence permit had expired, while at the same time, Kou Tsung Teng had allegedly committed a criminal act as regulated and threatened by criminal provisions in Article 126 letter c UU no. 6 of 2011 jo. Article 55 of the Criminal Code.

That based on the Extension Letter of Detention from the Respondent's Entity Number B- 25 / 0.1.10 / EP2 / 01/2012 dated 09 January 2012, a brief description of the case stated "On Monday 21 November 2011 at the Class I Immigration Office, Central Jakarta, the suspect KUO TSUNG TENG commits a criminal offense as well as trades blank fake immigration / passport travel documents by providing invalid data

or incorrect information to obtain the travel documents of the Republic of Indonesia for himself, violating Article 126 letter c of Law No. 6 of 2011. The Central Jakarta Immigration Office has submitted several proofs of documents. From the aforementioned subject, the suspect KUO TSUNG TENG submitted a pre-trial, but the panel of judges had decided or tried:

- 1) Refuse the application for KUO TSUNG TENG (applicant) for the whole;
- 2) Declare arrest of KUO TSUNG TENG (applicant) based on arrest warrant No. 02 / SPKAP / XI / 2011 dated November 25, 2011 is lawful;
- 3) Declare the detention of KUO TSUNG TENG based on detention order No. 01 / SPH AN / XII / 2011 / DIKKIM dated 20 December 2011 and an extension of detention letter Number: B-2 / 0.1.10 / Ep.2 / 01/2012 dated 9 January 2012, is lawful;
- 5) Declare seizure letter No. SP2B2/01/XI/2011/DIKKIM dated November 25, 2011 is lawful;
- 6) Charging KUO TSUNG TENG for paying court fees of zero.

For the sake of supremacy and law enforcement and safeguarding the authority of the state, including the authority of the state gate apparatus, then foreigners who abuse immigration permits are subject to legal actions in the form of:

- 1) Acts of criminal law, through a series of investigative actions in the criminal justice system process, then after completing the criminal procedure, followed by deportation to the country of origin and deterrence are not permitted to enter Indonesian territory within the time limit specified by law. As in the case in this study that the suspect KUO TSUNG TENG who filed a pretrial and continued to be proven to have committed an immigration crime, it was very appropriate that the Central Jakarta Immigration Class I Office had conducted it to detain and deport the person;
- 2) Administrative legal actions, investigative violations are not carried out, but are directly subject to immigration administrative measures, which are called immigration actions in the form of quarantine, deportation and deterrence.

THE OBSTACLES FACED BY PPNS *of* IMMIGRATIONS *on* CONDUCTING IMMIGRATION CRIMES INVESTIGATIONS

IN conducting investigations into violations of Law No. 6 of 2011, which was carried out by the Immigration PPNS did not always run smoothly and sometimes encountered various obstacles. These obstacles make it difficult for investigators to disclose a case or make a criminal case clear. These obstacles can come from within (internal) or from outside (external).

1. Internal barriers, namely obstacles faced by investigators within the Directorate General of Immigration itself, which consist of:
 - a. So far the Immigration PPNS is still a work that is attached to existing fields or activities, so that the investigative duties that are the responsibility of the PPNS Immigration PPNS cannot be fully handled. In general, the Immigration PPNS PPNS not only has investigative duties that require high concentration and is very specific, but also burdened with administrative tasks, even other tasks that are not at all related to law enforcement, so that investigative duties have not been properly touched. To overcome this problem, the priority scale will be carried out in carrying out the task of investigation by the Immigration PPNS.
 - b. The limited immigration PPNS personnel causes the handling of violations of the Immigration Act to often run less quickly. To overcome this, the PPNS Immigration is always given the motivation to work optimally with all the limitations that exist, both concerning the number of personnel or the budget.
 - c. Another thing related to the PPNS Immigration PPNS condition is that the quality of resources is still inadequate. Until now there has been no standard on PPNS Immigration Education, both concerning the curriculum, the period of education and the implementation of education. Therefore there needs to be a comprehensive PPNS Immigration education standard in order to improve the quality, capability and integrity of PPNS.
2. External barriers are obstacles faced by investigators from outside the Immigration Agency.
 - a. There is still a lack of public awareness to participate in reporting the presence of suspicious strangers around their neighborhood. To overcome this obstacle, socialization of immigration issues was carried out by cooperating with relevant agencies;
 - b. There is still miscommunication or differences in perception between the police and the prosecutor's office in assessing the completeness of a case file. The action taken to overcome this obstacle is by always coordinating horizontally with fellow law enforcement agencies;
 - c. Lack of caution or accuracy from the competent agency in issuing population documentation to someone who is suspect.

Problems or difficulties that arise in handling overflow cases are difficulties related to the problem where the case occurred. The Immigration PPNS in the Investigation Sub-Department has handled cases that have occurred at the Jakarta, Kalimantan, South Sulawesi, Cirebon and so on. In handling these cases, the Immigration PPNS on the Investigation Sub-Department experienced difficulties and collected evidence and witnesses and coordinated, especially if it is not supported by direct operational funds. The results can be seen from the process of completing an investigation that can run for months.

CONCLUSION

THE process of investigating the perpetrators of violations of Law No. 6 of 2011 by the Immigration PPNS conducted by Kuo Tsung Teng who has committed a criminal offense as well as trade in fake immigration/passport travel documents by providing invalid data or incorrect information to obtain the travel documents of the Republic of Indonesia for itself, the process His investigation was problematic because the suspect was a foreign national who still had a Taiwanese passport, while no witnesses knew of the arrest and detention of a suspect at the Central Jakarta Immigration Office I.

The obstacles faced by the Immigration PPNS in carrying out law enforcement duties against violations of the Immigration Act and how to solve them start from the Immigration PPNS problem which not only has investigative duties that require high concentration and are very specific, but also burdened with administrative tasks, even other tasks that are not at all related to law enforcement, so that investigative duties have not been properly touched; there are differences in perceptions between the police and the prosecutor's office in assessing the completeness of a case file; lack of accuracy from the competent agency in issuing population documentation to someone who is suspect; Another thing that is related to the Immigration PPNS condition is that the quality of resources is still inadequate; to the lack of community participation in reporting the presence of foreigners in the surrounding environment.

Therefore, the quality of immigration PPNS human resources must always be improved by providing regular training; and law enforcement officials, especially the police and prosecutors must always carry out functional coordination that is horizontal, so that law enforcement against violations of Law No. 6 of 2011 can be carried out optimally, empowered and effective.

REFERENCE

- Adelman, Robert, Lesley Williams Reid, Gail Markle, Saskia Weiss & Charles Jaret. "Urban Crime Rates and the Changing Face of Immigration: Evidence Across Four Decades". *Journal of Ethnicity in Criminal Justice*, 2017, 15(1): 52-77, DOI: <http://dx.doi.org/10.1080/15377938.2016.1261057>
- Arief, Barda Nawawi. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. Bandung: PT. Citra Aditya Bakti, 2001.
- Atmasasmita, Romli. *Sistem Peradilan Pidana*. Bandung: Binacipta, 1996.
- . "Aspek Hukum Kerjasama Regional Internasional dalam Rangka Mengatasi Peningkatan Imigran Gelap", *Research Report*, National Law Development Agency, RI Department of Justice, 1997-1998.
- Directorate General of Immigration. *Petunjuk Pelaksana Dirjen Imigrasi, No. F-337.IL.02.01 Tahun 1995 tentang Tata Cara Penyidikan Tindak Pidana Keimigrasian*, Jakarta: Dirjen Imigrasi, 1995.
- Friedman, Lawrence M., Grant M. Hayden. *American Law: An Introduction, Third Edition*, USA,: Oxford University Press, 2017.
- Francis, Angus, and Rowena Maguire. "Challenges and Opportunities in Respecting International Refugee Law in Indonesia." In *Protection of Refugees and Displaced Persons in the Asia Pacific Region*, pp. 131-148. Routledge, 2016.
- Gonzalez, Benjamin, Loren Collingwood, and Stephen Omar El-Khatib. "The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration". *Urban Affairs Review*, 2017, 0(0): 1-38, DOI: <https://doi.org/10.1177/1078087417704974>
- Griffin, Ricky W. *Management: Second Edition*, Boston: Houghton Company, 1987.
- Ihsan, Ahmad Yulianto. "Penegakan Hukum Menurut Undang-Undang Keimigrasian". *Journal of Legal and Policy Studies*, 2016, 2(1): 1-22.
- Kosandi, Meidi, Nur Iman Subono, Vinita Susanti and Evida Kartini. "Combating Human Trafficking in the Source Country: Institutional, Socio-cultural, and Process Analysis of Trafficking in Indonesia". *Advances in Social Science, Education and Humanities Research*, 2017, First International Conference on Administrative Science, Policy and Governance Studies (1st ICAS-PGS 2017), Second International Conference on Business Administration and Policy (2nd ICBAP 2017), Vol. 167: 241-246, Atlantis Press.
- Marpaung, Leden. *Tindak Pidana Lingkungan Hidup dan Masalah Prevensinya*. Jakarta: Penerbit Sinar Grafika, 1997.
- Mcnevin, Anne, Antje Missbach, and Dedy Mulyana. "The Rationalities of Migration Management: Control and Subversion in an Indonesia-Based

- Counter-Smuggling Campaign”. *International Political Sociology*, 2016, 10(2): 223–240.
- Muladi. *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro, 1995.
- Ousey, Graham C., and Charis E. Kubrin. “Immigration and Crime: Assessing a Contentious Issue”. *Annual Review of Criminology*, 2018, 1(2018): 63-84, DOI: <https://doi.org/10.1146/annurev-criminol-032317-092026>
- Ozden, Caglar, Mauro Testaverde, Mathis Wagner. “How and Why Does Immigration Affect Crime?”. *Working Paper*, 2016: , 1-38, DOI: 10.13140/RG.2.1.2423.9601, retrieved from , https://www.researchgate.net/profile/Mathis_Wagner/publication/304998920_How_and_Why_Does_Immigration_Affect_Crime/links/577e6fd508aeaa6988b0c80b/How-and-Why-Does-Immigration-Affect-Crime.pdf
- Raharjo, Satjipto. *Sosiologi Hukum Perkembangan Metode dan Pilihan Masalah*. Surakarta: Muhammadiyah University Press, 2002.
- . *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*. Bandung: Badan Pembinaan Hukum Nasional, Bandung, 1930.
- Reksodiputro, Mardjono. *Hak Asasi Manusia dalam Sistem Peradilan Pidana*. Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum UI, 1994.
- Regulation of the Minister of Justice of the Republic of Indonesia No. M-05.PW.07.03 of 1984 concerning Implementation Guidelines for the Appointment and Dismissal of Civil Servant Investigators, Jakarta, 1984.
- Remmelink, Jan. *Hukum Pidana; Komentaris atas Pasal-Pasal Terpenting dari Kitab Undang- Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*. Jakarta: PT.Gramedia Utama, 2003.
- Santoso, M. Imam. *Perspektif Imigrasi dalam Pembangunan Ekonomi dan Ketahanan Nasional*. Jakarta: UI Press, 2004.
- Soekanto, Soerjono. *Sosiologi Hukum Dalam Masyarakat*. Jakarta: CV. Rajawali, 1980.
- Syahrin, M. Alvi. “The Implementation of Non-Refoulement Principle to the Asylum Seekers and Refugees in Indonesia”. *Sriwijaya Law Review*, 2017, 1(2): 168-178.
- . “Menakar Kedaulatan Negara dalam Perspektif Keimigrasian”. *Jurnal Penelitian Hukum De Jure*, 2018, 18(1): 43-57.
- Wahyuddin, Muh. Asri “Embodiments of the Sovereignty of the Republic of Indonesia under the Immigration Control”. *Substantive Justice International Journal of Law*, 2018, 1(1): 9-22.

Laws and Regulations

The 1945 Constitution (UUD 1945)

The Criminal Code (KUHP)

Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP)

Republic of Indonesia. Law Number 6 of 2011 concerning Immigration. Jakarta. 2011

Republic of Indonesia. Managing Director of the Director General of Immigration. Number F-337.IL.02.01 of 1995 concerning Procedures for Investigating Immigration Crimes. Jakarta. 1995.

Republic of Indonesia. Regulation of the Minister of Justice of the Republic of Indonesia Number: M-05.PW.07.03 of 1984 concerning Implementation Guidelines for Proposing Appointment and Dismissal of Civil Servant Investigators. Jakarta. 1984.

Republic of Indonesia. Implementation Guidelines for the Director General of Immigration. Number: F- 337.IL.02.01 of 1995 concerning Procedures for Investigating Immigration Crimes. Jakarta. 1995.