

DEPORTATION AND PRO JUSTITIA COMPULSORY MECHANISM: THE PREVENTION REMEDY OF ABUSE OF POWER AND HUMAN RIGHTS UPHOLDING

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Abstract

One of the sources of Non-Tax State Revenue increasing comes from the Administrative Sanctions of Immigration. The enforcement of the sanction is followed up by the deportation of the foreigners who violate the law in Indonesian territory. The juridical basis for this authority is the attribution regulated in Law Number 6 of 2011 concerning Immigration and its derivatives. In practice, the implementation of Article 75 of Immigration Regulation is disrupted which has resulted the human rights protection is not accommodated as stipulated in Article 9 of Declaration of Human Rights and also Article 34 Law Number 39 of 1999. This cannot be allowed in the name of the Principle of Legal Certainty, Transitional Justice, and Global Justice. The result must refer to the declaration agreed upon at United Nations, in which Article 34 stipulates that "every person shall not be exiled or disposed arbitrarily". This article is an arrangement in Article 9 of the Universal Declaration of Human Rights. Thus, this article must be added to the legal substance regarding the obligation to have a judge's verdict with permanent legal force from the court in Indonesia against the foreigners who violate the Law. This commitment must also be applied in all legislative products stipulated by the government as the legislator. This includes all legal regulations in Immigration.

Keywords: *Deportation, Transitional Justice, Immigration Law Enforcement in Indonesia.*

INTRODUCTION

Through Law Number 6 of 2011 concerning Immigration together with its derivatives has accommodated the mechanism of foreigners traffic monitoring in Indonesia. In order to uphold the sovereignty of the Republic of Indonesia, it is important to continuously examining and re-analysing the regulations for the sake of the society including the foreigners in Indonesian Territory. It cannot be denied that the traffic of foreigners often causes both criminal and civil problems. Thus, all entry and exit activities of foreigners or immigration¹ need to be continuously evaluated both in terms of regulation and implementation so that they remain in line with the community expectations in these activities. Permission to enter is granted by the obligation to hold a passport as the initial identification of a person's personality status. Visa is also obligatory that is used for selecting foreigners who enter a country marked with a stamp affixed by the authorized official.² This procedure is a preventive effort to avoid negative impact caused by foreigner traffic in Indonesian Territory.

Globalization has caused the access boundaries between countries become *stateborderless*. However, in the name of state sovereignty, it is obligatory to apply clear identification and verification regulation to all individuals from various countries or domestics who travel back and forth across the country's territory. There was a percentage decrease in the non-tax state revenue earned from immigration services. However, since entering the new normal era, the situation started to improve by the opening of the first international flight on 14 October 2021 that consists of cargo, evacuation, and regular plane which unfortunately has 0 passenger. Commercial flight was re-opened in February 2022 that brought 10.364 passengers from 4 February – 20 March 2022. The monthly data of Visa on Arrival (VoA) issuance before pandemic was approximately 30 thousand VoA that earned approximately IDR 15 billion per month for non-tax state revenue. Since the reimplementation of VoA for 23 countries from 07 – 20 March

¹ Jazim Hamidi dan Charles Christian, *Hukum Keimigrasian Bagi Orang Asing Di Indonesia*, (Jakarta: Sinar Grafika, 2016), 1.

² Ajat Sudrajat Havid, *Formalitas Keimigrasian Dalam Perspektif Sejarah*, (Jakarta: Direktorat Jenderal Imigrasi Departemen Hukum Dan HAM RI, 2008), 22.

2022, 2,481 VoA had been issued that earned IDR 1,240,500,000 for non-tax state revenue. There was a revenue decrease by IDR 13,795,500,000 (approximately 13 billion) with loss ratio approximately 91,73%.³

The increase began to occur since the establishment of the New Normal policy through Large-Scale Social Restrictions or PSBB by Ministry of Health through Government Regulation or PP Number 21 of 2020 concerning PSBB and followed by the enactment of Presidential Decree Number 11 of 2020 concerning Establishing a Public Health Emergency.⁴ Moreover, it has also been agreed that Indonesia will hold G20 Presidency in 2022, so this honor must also be accompanied by proving the level of security both from political and health perspective in Indonesia to the world community.

Access between countries, which was once closed, has begun to open up since the statement issuance by the United Nations Conference on Trade and Development or UNCTAD in 2020 that stated overprotectiveness of various countries have affected the situation of the developing countries badly since these countries are still struggling to resolve debt burden over the years which is estimated to reach 191% as the highest level surveyed.⁵ Indonesia as a developing country which is also very dependent on income from immigration sector is certainly affected by this. Therefore, it needs to be considered by the government to formulate a regulation that is aimed to attract tourists and foreigners who come to Indonesia for economic opportunities.

Immigration can also take a role in stabilizing the trust restoring between countries as well as restoring the economic sector specifically in non-tax state revenue (Penerimaan Negara Bukan Pajak – PNBP) through VoA, Visit Visa, Limited Stay Permit, Passport, as well as Administrative Sanctions Fine. Based on Immigration Administrative Action Determination Data of Ngurah Rai Immigration Office since 2018 until 2021, the number of foreigners violated the law increased and several of them were deported. The principle of legal certainty had to be applied to those who were deported in order to gain trust and good reputation from global community that will give great impact to the country's economy. The bad records regarding the government bureaucratic system in the global community becomes a reason to form a certain law enforcement instrument. The principle of legal certainty and transitional justice between countries that have different legal systems also adds the reason of the law formation importance. The differences of the legal systems may give different perspective regarding the human rights upholding for individuals.⁶

The many black records regarding the government bureaucratic system in the eyes of the world must be accommodated immediately through the preparation of clear law enforcement instruments. This is also important given the principle of legal certainty and transitional justice between countries with different legal systems. This difference, of course, will also give different perspectives regarding the upholding of Human Rights (HAM) for individuals.⁷

LITERATURE REVIEW

There has not yet been any specific research that thoroughly discusses the mechanisms of implementing deportation authority related to the enforcement of human rights. Some previous studies have been limited to discussing the mechanisms of oversight regarding the misuse of visit visas by foreigners, written by Nadia Anabela Siregar.⁸ The subsequent research on the Dynamics of Implementing the Selective Policy Principle in Immigration Law Regarding the Prevention of Foreign Nationals During the Covid-19 Pandemic in Indonesia was written by Rabbani. The above description illustrates the importance of providing theoretical and practical legal analysis to Immigration, employment and human rights stakeholders and researchers. Therefore, it is interesting to research and

³ Kementerian Hukum Dan HAM, 2022, *Laporan Bulanan Kantor Imigrasi Khusus TPI Ngurah Rai*, Denpasar.

⁴ Saravistha, Deli Bunga, I. Made Adi Widnyana, and I. Wayan Werasmana Sancaya. "Realita Budget Constraint Dan Trade-Off Sebagai Konsekuensi Bagi Pemerintah Daerah Bali Dalam Pengimplementasian Kebijakan Di Masa Pandemi COVID-19." *VYAVAHARA DUTA* 16, no. 2 (2021): 199-206.

⁵ Muhyiddin, Muhyiddin. 2020. "Covid-19, New Normal, Dan Perencanaan Pembangunan Di Indonesia". *Jurnal Perencanaan Pembangunan: The Indonesian Journal of Development Planning* 4 (2), 240-52. <https://doi.org/10.36574/jpp.v4i2.118>.

⁶ Kementerian Hukum dan HAM, "Data Penetapan Tindakan Administratif Keimigrasian (TAK) Tahun 2018-2021", (Denpasar: Kantor Imigrasi Kelas I Khusus TPI Ngurah Rai). Lihat juga Siaran Pers Ditjen Imigrasi RI, Pemerintah Berlakukakan Tarif Baru Layanan Keimigrasian, VoA dan VITAS Tidak Berubah, Diakses Pada 1 Desember 2022 Pukul 19.09 wita melalui <https://www.imigrasi.go.id/id/2022/04/17/siaran-pers-pemerintah-berlakukakan-tarif-baru-layanan-keimigrasian-voa-dan-vitas-tidak-berubah/>

⁷ I Made Budi Arsika, Ni Gusti Ayu Dyah Satyawati dan Sagung Putri M. E Purwani, Isu Hak Asasi Manusia dalam Penerapan Deportasi terhadap Tenaga Kerja Asing di Bali, *Pandecta. Volume 11. Nomor 1. June 2016*

⁸ Nadia Anabela Siregar, Bruce Anzward, Elsa Aprina, Monitoring Mechanisms Against Abuse Of A Visa Visited By The Foreign Citizens Who Work In The Gulf Of Balikpapan Steam Power Plant, *Jurnal Lex Suprema ISSN: 2656-6141 (online) Volume 2 Nomor 1 Maret 2020*

explore through the following research questions; What is the importance of a clear pro-Justitia mechanism for foreigners who have problems with the law regarding the upholding of human rights protection? And what is the concept of regulating the mechanism for applying deportation sanctions in order to carry out the mandate of Article 75 of the Immigration Law in accordance with human rights?

METHOD

The legal materials used in this research are all regulations related to Civil and Political Rights such as the International Covenant on Civil and Political Rights (ICCPR), the Declaration of Human Rights, the Regulations of Human Rights in Indonesia such as Law Number 39 of 1999 as well as Immigration Law and its derivatives. This is a doctrinal and non-empirical research that uses the data of Immigration cases as the main data source, and also the online news together with reputable journal articles related to the subject matter. This research focuses on the reconception of deportation sanction implementation as regulated in Article 75 of Immigration Law in order to preserve the Indonesian Immigration's integrity through human rights upholding. The research method of this study is normative research method that researches the laws and regulations, study of documents, and the data used in this research is limited to reports / data from Immigration. This method is a qualitative research or referred as a study in which the research conducted is non-empirical and doctrinal.

RESULTS AND DISCUSSION

The Regulation of Deportation Execution in Indonesia

a. Law Number 6 of 2011 concerning Immigration

There is an article in Immigration Law that provides discretionary opportunity for the authorized officials. It is the Article 75 that stipulates:

- “(1) Immigration Officer shall be authorized to conduct the Immigration Administrative Action against Foreigner who is present in the Indonesian Territory that neglects hazardous activities and reasonably suspected to endanger public security and orderliness or without respect or observe applicable laws and regulations;
- (2) Immigration Administrative Action as contemplated in paragraph (1) can be of:
 - a. Inclusion in the list of Prevention or Deterrence;
 - b. Restriction, change, or cancellation of Stay Permit;
 - c. Prohibition of staying at one or some specific places within the Indonesian Territory;
 - d. Necessity of residing at a certain place within the Indonesian Territory;
 - e. Imposition of burden costs; and/or
 - f. Deportation from the Indonesian Territory.
- (3) Immigration Administrative Action such as Deportation can also be conducted against Foreigner who is staying within the Indonesian Territory for trying to escape from threat and execution of the sentence in his/her origin country”

This article implies that Immigration Officials have the authority to impose administrative sanctions to foreigners who threaten the national stability, interfere public security and orderliness or who do not comply with the laws applied in Indonesia. Furthermore, the Immigration Administrative Sanctions are also regulated in the article in the form of first, inclusion in the list of Prevention or Deterrence; second, restriction, change, or cancellation of Stay Permit; third, prohibition of staying at one or some specific places within the Indonesian Territory; fourth, necessity of residing at a certain place within the Indonesian Territory; Fifth, Imposition of burden costs; and the last is deportation from the Indonesian Territory.

As mandated in the 1945 Constitution of the Republic of Indonesia, Indonesia is a State Law which can be interpreted that the actions of authorized officials cannot be done arbitrarily. The distortion in every central policy setting applied in the regions is potentially to occur. The principle of Good Governance is very important to be used as a guide in every policy that sometimes requires the authorized officials to exercise discretion. Discretion is regulated in Article 1 point 9 of Law Number 30 of 2014 concerning Government Administration as decisions and/or actions determined and/or carried out by Government Officials to address concrete problems faced in administering government in terms of laws and regulations that provide choices, not regulated, incomplete or vague, and there is government stagnation.⁹

⁹ Muhtar Said, *Asas-Asas Hukum Administrasi Negara*, (Yogyakarta: Thafa Media, 2019), 39

The role of Immigration in this case is supervising the activities of foreigners in the jurisdiction of Indonesia. Supervision means the entire process to control all the processes carrying out the tasks according to or whether there is a discrepancy with the plans or rules that have been determined. As stipulated in Article 75 Paragraph (1), the authority for Immigration Administrative Actions for foreigners lies with the Immigration Officer. The purpose is to maintain national stability, but also must consider the other aspects such as the relation between countries that is really important to be kept in order to establish international relations. Therefore, the application of the omnibus article cannot be done arbitrarily. In addition, the existing discretion potential can also raise the possibility of the authority abuse or corruption done by the related officials. It is undeniable that Immigration has many bad records regarding corruption or power abuse. Even though, the Minister of Law and Human Rights, Yasonna Laoly admitted that it was caused by the lack of supervision from Ministry of Law and Human Rights.¹⁰

Discretion or *freies ermesen* in the rule-of-law state must fulfill certain elements including those that aimed to public service tasks implementation. It is an active action attitude of the state administration function. Discretion must be regulated in the law clearly. The action is taken based on their own's initiative and intended to overcome important issues arise in sudden. Finally, the discretionary action taken must be accountable both morally to God Almighty and legally in order to fulfill the principle of legal certainty.¹¹

b. Civil and Political Rights for Foreigners in the ICCPR and Human Rights Law

Civil and political rights in the ICCPR regarding the deportation must be carried out based on pro-Justitia includes the right to life (Article 6), the right to be free from torture and inhumane treatment (Article 7), the right to freedom and personal security (Article 9), the right of detainees for humane treatment (Article 10), freedom to move and choose a place of residence (Article 12), freedom for foreigners (Article 13), right to a fair trial (Article 14), Protection from arbitrary criminal law (Article 15), Equality before the law (Article 16 and 26), freedom of opinion and expression (Article 19), prohibition of war propaganda and discriminatory treatment (Article 20), right for minorities (Article 27), and other rights. Indonesia has guaranteed human rights through Law Number 39 of 1999 concerning Human Rights, as stipulated in Article 34 that states "every person shall not be exiled or disposed arbitrarily". This article is regulated in Article 9 of the Universal Declaration of Human Rights which is universal.¹²

As an effort to establish and maintain good relations between countries, first, the imposition of deportation as an administrative sanction can be optimized to the preventive law enforcement, not just repressive. When the deportation sanction is imposed to the foreigners, it is mandatory to consider the potency that has possibilities to trigger the tension between 2 countries and also the image of Indonesia in the global community, except justifiable reasons and accepted by the world community as something dangerous, for example terrorism, treason, and that sort of thing. Second, this research is expected can produce a formulation of regulation implementation from Government Regulation Number 31 of 2013 concerning Regulation Implementation of Law Number 6 of 2011 concerning Immigration. Based on the provisions of Article 215 paragraph (4) of Government Regulation of the Republic of Indonesia Number 31 of 2013 concerning the Regulation Implementation of the Immigration Law states that the copy of expenditure decision as referred to paragraph (3) is submitted to the guarantor, family and/or the country representative. According to it, the Directorate General of Immigration is expected to formulate the derivative regulation or reformulate the Articles in the Government Regulation 2013 or stipulate the regulation into the regulation of the Minister of Law and Human Rights regarding the guarantor criteria (Indonesian Citizens) who is bonafide and able to guarantee the detainee who is granted permission to stay outside of Immigration Detention Centre.

The state is a political entity which can be interpreted that the state is obliged to prosper its people. However, the state is not allowed to do business because it is a private legal area. It should be that all non-tax state income in the scope of immigration should not be used as an achievement target. It is important to maintain diplomatic relations between countries, moreover the tourism sector as one of the crucial sectors in the country's economic development is heavily influenced by the arrival of foreign guests to Indonesia and the condition of national security which can be one of the determining indicators for tourists' interest in coming to Indonesia. In the capacity of the state as a subject of International Law, Indonesia is subject to international customs. Administrative sanctions in Article 75 of

¹⁰ Media Indonesia, *Menumpas Kebobrokan Imigrasi*, Diakses Pada 2 Desember 2022 Pukul 10.17 wita melalui laman: https://mediaindonesia.com/editorials/detail_editorials/2049-menumpas-kebobrokan-imigrasi

¹¹ Yopie Morya Immanuel Patiro, *Diskresi Pejabat Publik Dan Tindak Pidana Korupsi*, (Bandung: CV Keni Media, 2012), 155-156

¹² United Nations, <https://www.ohchr.org/en/human-rights/universal-declaration/translations/indonesian?LangID=inz>, Diakses Pada 1 Desember Pukul 08.07 wita

the Immigration Law do not clearly regulate the concept of deportation and its implementation parameters, there is unclear concept of violation of public order for foreigners who truly uphold the protection of human rights for foreigners within the territory of a democratic rule of law.¹³

c. Preventing Abuse of Power Through Clear Legal Instruments

Corruption, collusion, and nepotism action that is done through misappropriation of budget funds that should be put in the state's treasury fund is not something new, it is also said that this becomes a culture in the government. This action can also be done through administrative authority abuse done by the public officials. As a state of law, Indonesia should meet good legal requirements that implements the existence of benefit principle, clearly socialized to the community, being consistent, having a clear implementation mechanism, being simple, and clearly enforced as stated by J. Bentham quoted by N. Sarwo Rini. However, in practice many legal products are found to be unclear in the context of the legislative process and its implementation as stated by Mahfud MD.¹⁴

Peter Schweizer also expressed a more direct view that: "The criminal justice system is supposed to be about equal justice under the law, yet one person can decide the fate of justice by deciding to pursue or ignore a case, or by dropping charges against some one. Prosecutors are given the power to charge or not charge individuals with criminal offenses. Justice that is not blind to a suspect's political connections, financial ties, or other alliances is abuse of power. These charges can include incredibly troubling cases".¹⁵

The authority mandated by the law such as that owned by immigration officials, must also be clarified on the mechanism for implementing this authority in the form of legal instruments. Therefore, it can minimize the occurrence of authority abuse. The existence of the omnibus article, that is Article 75 of the Immigration Law must also be derived specifically in the form of implementation regulation or at least accompanied by a clear explanation of the articles.

d. Selective Policy Mechanism

As stated by Sassen and quoted by Deden Rafi, Immigration is a constitutive process of globalization in the current era.¹⁶ It was also stated that while a country's territory was denationalized in order to facilitate global economic development, politics was said to have been renationalized as a result of globalization and even had a major impact on the pattern of society, namely the emergence of an anti-immigrant culture.¹⁷ Specifying the traffic permits for its citizens to travel is part of Human Rights Upholding that must be provided by a state and also to specify the entry permits and all regulation aimed for foreigners who visit the country on behalf of the state sovereignty. In order to uphold the sovereignty, it must be also be limited through regulations to secure our country. The Selective Policy mechanism in the Immigration Law describes that every foreigner who enters the territory of the Republic of Indonesia and wishes to obtain a residence permit should be in accordance with the intent and purpose of being in the territory of the country while upholding values of human rights. Foreigners who provide benefits to the state and do not endanger the security situation and public order will be granted entry permits.¹⁸ The application of Selective Policy is carried out in the name of the National Interest to keep the state sovereignty. This can be seen from two important elements of Immigration Selective Policy, that is first, security approach; Second, welfare approach, with an expectation that the visit of foreigners to Indonesia can give benefits to the prosperity of the society.¹⁹

¹³ Citrawan, H.. "Transitional (in)Justice as Duration". *Journal Of Southeast Asian Human Rights*, 6(1), (2022), 101-130. doi:10.19184/jseahr.v6i1.31523

¹⁴ Nicken Sarwo Rini, "Penyalahgunaan Kewenangan Administrasi Dalam Undang Undang Tindak Pidana Korupsi (Abuse of Administrative Powers in Corruption Crime Laws)", *Jurnal Penelitian Hukum DE JURE*, ISSN 1410-5632 Vol.18 No. 2, Juni 2018: 257-274, DOI: <http://dx.doi.org/10.30641/dejure.2018.V18.257-274>

¹⁵ Peter Schweizer, "Profiles In Corruption", (New York: Harper), 23

¹⁶ Deden Rafi Syafiq Rabbani, Dinamika Penerapan Asas Selective Policy Dalam Hukum Keimigrasian Terhadap Penangkalan Warga Negara Asing Pada Masa Pandemi Covid-19 Di Indonesia, *Jurnal Rechtsvinding: Media Pembinaan hukum Nasional*, Volume 10 Nomor 1, April 2021

¹⁷ Chaterine Dauvergne, *Making people Illegal: What Globalization Means for Migration and Law*, (Cambridge-New York: Cambridge University Press, 2008), h. 2

¹⁸ Junior Perdana Sande, Selective Policy Imigrasi Indonesia terhadap Orang Asing dari Negara Calling Visa, *Indonesian Perspective*, Vol. 5 No. 1 (Januari-Juni 2020): 92-111

¹⁹ Nunaningsih Amriani, Interpretation On Public Policy In Recognition And Enforcement Of Foreign Arbitral Award In Indonesia: Turn Aside The Legal Certainty, *Brawijaya Law Journal* 1(1):24-33. <https://doi.org/10.21776/ub.blj.2022.009.01.04>.

Philosophical Thoughts About Human Rights, Freedom and Independence

Liberty, Independence, Licence-Privilege

a. Liberty

Studies related to the concept of liberty²⁰ will be presented through the thoughts of Thomas Hobbes, John Locke, J.J. Rousseau and Montesquieu who are very influential philosophers in discussions related to the state and law.

Historically, the term liberty became popular when the people tried to fight against the absolute power of the king in the XVII and XVIII centuries, which gradually became known in the context of the struggle for human rights.

1. Thomas Hobbes thought that human rights was the solution to the situation of *Hommo Homini lupus Bellumnum Contra Omnes* which was a situation that encourages the formation of community agreements by surrendering their rights to the authorities to end hostilities and wars. The theory he put forward is called the theory that led to the formation of the Absolute Monarchy.
2. John Locke, hold the opposite view that not all individual rights must be left to the state but only those relating to state agreements, the rest must be held by individuals.
3. Charles Baron Montesquieu (1689-1755) who expressed through his work called *The Spirit of laws* formulated as follows "When the legislative and executive powers are united in the same person or the same body of magistrates, there can be no liberty" (When the legislative and executive powers merge in one institution, there will be no independence).

b. Independence

Immanuel Kant stated "the independence of each member of commonwealth as a citizen". Independence defined as not dependent on any party.²¹

c. Licence, Privilege

Lili Rasjidi stated that the term license or privilege is something special that comes from not treating an act to fulfill certain obligations to the right holder.²²

d. Freedom

The concept of freedom as stated in civil and political rights in the ICCPR.

e. The concept of Right

First, it was known the term of Natural Right that was derived from the natural law ideas in the 17th Century. Right is conceptualized as "what is nature" that is what God has given to every human being. As time goes by, the term Human Right became popular in the 18th Century. Fundamental Right consists of two, they are:

1. Legal Right;
2. Moral Right.

Fundamental is not interpreted the same as constitutional, but as stated by James W. Nickel, the fundamental concept can be described through several elements, such as:

1. It is owned by one party as the owner (conditions of possession);
2. Right is associated with freedom or luck;
3. A right that is fully defined will identify the parties that must play a role in efforts to fulfill it;
4. The value of right relates to the question of whether a right can sometimes be overridden by other considerations and cases of conflict. This right is usually referred to as *Prima Facie Rights*, which are defined as non-absolute rights, which are subject to other considerations.

f. The Concept of "Freedom of Opinion"

Based on Article 28 of the 1945 Constitution, in principle, expressing thoughts is the same as expressing opinion. The term view means an opinion, consideration, thought, result of thought. Opinion can be expressed verbally or written.²³ In the development of the concept of freedom of expression, many comparisons have been sought with concepts in Western countries with the concept of a socialist state and concepts of third world countries. Thoughts about freedom of expression in the western world have dominated the thinking of UN member states, which was realized after World War II through the universally accepted Bill of Rights.²⁴

²⁰ Yohanes Usfunan 2011, *HAM Politik Kebebasan Berpendapat di Indonesia*, (Denpasar, Udayana University Press), h. 16

²¹ *Ibid*, h.102

²² Lili Rasjidi, S. Sos, and IB Wyasa Putra. *Hukum sebagai suatu sistem*. (Remaja Rosdakarya, 1993).

²³ *Ibid*, h. 121

²⁴ *Ibid*, h. 122

Historical studies are also used to discuss the concept of freedom of expression. Through the development of thoughts about the state and law, it is intended to seek a theoretical justification basis that started from the time of the Ancient Greeks to the Renaissance which was based on the following considerations:²⁵

1. Since the era of Ancient Greeks-XVII Century, natural law has been used as the basis for state and legal thought, natural law has its origins in absolute principles, namely the principle of human rights.
2. Historically, the recognition and protection of freedom of expression began to develop since the Ancient Greek Age when the city-state was formed, known as the polis or city-state.
3. During the Ancient Roman era, the development of law progressed because private law began to be separated from public law which had a direct impact on the recognition and protection of human rights.
4. During the Renaissance, the Monarchomaken emerged, which fought against absolutism. Then Calvinism appeared which fought for political freedoms in upholding democracy.

g. Responsibility Concept

There are two elements of responsibility, such as:

1. Responsibilities related to obligations;
2. On the other hand, the obligation is experienced as a calling.

The formulation above shows that an act that is full of responsibility is a manifestation of human dignity. Awareness of coexistence and mutual need for one another will cause humans to obey the prevailing norms.

Comparison of Deportation Mechanisms with Malaysia

a. Legal Convergence Across Malaysian Jurisdictions

In the globalization era, legal convergence is the same as utilizing digital platforms as a means of disseminating the legal system applied in a country. This is a manifestation of major changes in the field of law enforcement and patterns of community behaviour.²⁶ For this reason, it is important to take advantage of internet media access for legal socialization. Moreover, the field of Immigration concerns relations between countries and individuals within it across borders.²⁷

Indonesia and Malaysia both adhere to Civil Law. Another common legal system is Common Law as adopted by the United States. However, in making comparisons, several legal experts have said that since 1929 John Barker Waite determining or identifying the legal system in a country is no longer enough just to look at the existence of codified written law in the country concerned but must also look at the enforcement or implementation of written law in the country.²⁸

In the Law of the State of Malaysia as the country which becomes the object of this research comparison, it is regulated in the Laws of Malaysia Act. 155 Immigration Act 1959/63 that:

“(1).For foreigners who overstay in Malaysia, the settlement process is they cannot leave the territory of Malaysia without paying the fine and the payment process can only be done at the immigration office under the name of managing COM (check out Memo) whereas if the foreigners who overstay are caught red-handed in routine inspections or raids, pro-Justitia will be proceed.

(2). For foreigners who work without a visa, if they are caught or subject to raids in the immigration process, they cannot be deported immediately. Foreigners who violate the rules must be processed in court, after completion of the sentencing process the foreigner concerned will be detained in the detention house to wait for his repatriation process.”

The Indonesian government must have valid travel documents to ensure the internal security of people entering or leaving Indonesia. Foreigners who enter the jurisdiction of Indonesia must meet several requirements set forth in the Government Regulation of the Republic of Indonesia Number 31 of 2013 concerning Regulations for Implementing the Immigration Law, such as:²⁹

- (1) Must have a valid Visa, unless those who are exempted from the obligation to have a Visa;
- (2) Must have a valid passport and other travel supporting documents if needed;

²⁵ *Ibid*, h. 123-124

²⁶ Kemenkumham, *Dinamika Konvergensi Hukum Telematika Dalam Sistem Hukum Nasional*, https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=668:dinamika-konvergensi-hukum-telematika-dalam-sistem-hukum-nasional&catid=107&Itemid=187, Diakses Tanggal 8 Desember Pukul 07.43 wita

²⁷ *Ibid*

²⁸ Choky R. Ramadhan, *Konvergensi Civil Law dan Common Law di Indonesia dalam Perumusan dan Pembentukan Hukum*, *MIMBAR HUKUM* Volume 30, Nomor 2, Juni 2018, Halaman 213-229

²⁹ Vasishtan P., *The Passport to Regulate Foreign Jurisdiction: The Personal Data Protection Bill, 2019 on its Extraterritorial Application*. *Brawijaya Law Journal* 9(1):47-58. <https://doi.org/10.21776/ub.blj.2022.009.01.04>.

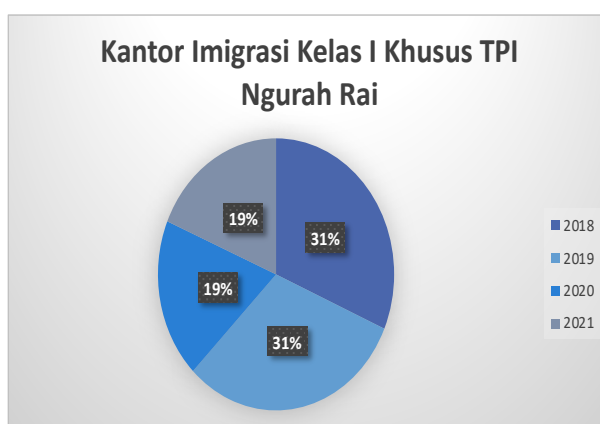
(3) The foreigners are not listed in the Immigration Deterrence List.

b. The Significant Differences of Deportation Requirements between Malaysia and Indonesia

The legislation concerning Immigration that is regulated in the Laws of Malaysia Act. 155 Immigration Act 1959/3 describes that deportation cannot be done without court decisions that have permanent legal force. Meanwhile, in Indonesia the obligation to have a Justitia procedure has not been explicitly stipulated in the substance of the regulation. This tends to give opportunities to the occurrence of authority abuse that can also be caused by the nescience of the officials that in the name of upholding human rights, the justice mechanism should have been taken first.

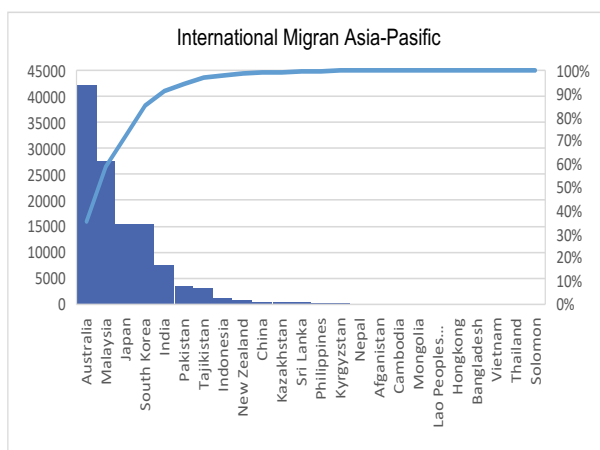
Administration sanctions (fine) that cannot be paid by the migrants will make them deported from the state's territory. One of the tourism areas in Indonesia that has a busy traffic of foreigners is Bali. A graph of the deportation numbers in Ngurah Rai International Airport, the comparison of the number of International Migrants in Asia-Pacific, and deportation data from 2019 to 2022 are presented as follows:

Tabel. 1 The Data of Deportation 2018-2021



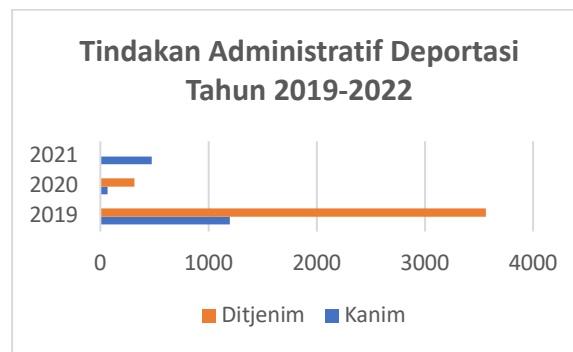
Source: *The Immigration Administrative Action Determination Data of 2018 – 2021 (edited)*

Tabel. 2 The Comparison of the Number of International Migrants in Asia - Pacific



Source: <https://www.globaldetentionproject.org/regions-subregions/asia-pacific> (Edited)

Tabel 3. Data Deportasi Tahun 2019-2022



Source: *The Data of Immigration Administrative Action, Directorate General of Migration 2019 – 2021 (Edited)*

Based on above tables and diagrams, it is shown that the traffic of foreigners in and out of the country is very busy. The principle of transitional justice should be considered in order to uphold the Human Rights through administrative sanctions enforcement mechanism and criminal sanctions for foreigners caught in legal troubles in Indonesia. This also to improve the bureaucracy reputation in Indonesia. Harison stated that “As one of the leading scholars in the field, Ruti Teitel defines transitional justice as “the conception of justice associated with periods of political change, characterized by 2 legal responses to confront the wrong doings of repressive predecessor regimes”. This principle is the basis that must be considered as the elaboration of the principle of Global Justice in the implementation of sanctions in Immigration. It is expected that legal certainty can be experienced by the foreigners who violate the law in state territory, therefore good reputation of law enforcement and immigration bureaucracy can be achieved.

c. The Conception of the Implementation Mechanism of Article 75 of the Immigration law that Prioritizing the Human Rights Upholding and Legal Certainty

In the elucidation of the articles in the Immigration Law, the Article 75 is explained as follows:

“Article 75

Paragraph (1)

Self-explanatory

Paragraph (2)

Letter a

Self-explanatory

Letter b

Self-explanatory

Letter c

"The banishment is directed to the foreigner whose existence is not desired by the government in particular Territory of Indonesia."

Letter d

“Living in particular place” means placement in the Immigration Detention House, Immigration Detention Room, or elsewhere.

Paragraph (3)

"Self-explanatory."

The above explanation has potential to emerge distortion in its implementation, therefore deportation sanctions imposition mechanism for foreigners must be stipulated with judicial process that has permanent legal force.

Indonesia is a democratic state under the rule of law. As previously explained that Equality Before the Law is an absolute requirement for law enforcement in the territory of the country, Foreigners who are suspected of being guilty must still be declared innocent prior to a judicial process and a decision stating so.

The principle of presumption of innocence must be upheld in the name of law. In Article 8 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power and in the General Explanation of Law Number 1981 concerning Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana / KUHAP*) it is regulated that:

“Paragraph (1)

“Every person who is suspected of being arrested, detained, prosecuted, or presented before a court must be considered innocent before a court decision states his guilt and has obtained permanent legal force.”

In the name of upholding human rights, everyone suspected of violating the law must be treated as if they were innocent given the principle of presumption of innocence. This principle is often ignored by law enforcers. It is important to establish Pro-Justitia's obligations in enforcing immigration, through the research of this article it has been very sufficient to prove that all officers'

CONCLUSION

The conclusion in this article is that a clear legal instrument is needed in immigration administrative practices in order to continue to uphold human rights. Thus, later it will also influence the image of Indonesia in the global community and political association. Regarding the recommendation that in the future the Law on Human Rights in Indonesia must refer to the declaration agreed upon at the United Nations, where Article 34 stipulates that "Every person shall not be exiled or exiled arbitrarily". This article is an arrangement in Article 9 of the Universal Declaration of Human Rights. Thus, it must be added to the legal substance regarding the obligation to have a judge's decision with permanent legal force from a court in Indonesia against foreigners who violate the law. The elucidation of Article 75 of the Immigration Law must be conceptualized clearly so that prosecutions against foreigners comply with the Legal Certainty Principle which will later greatly affect the reputation of the Indonesian State Immigration bureaucracy in the global community. This commitment must also be absorbed into all legislative products stipulated by the government in its capacity as a legislator. This includes all legal regulations in the field of Immigration.

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