

# **JURIDICAL ANALYSIS OF THE ROLE AND RESPONSIBILITIES OF IMMIGRATION CONTROL ON THE USE OF PASSPORTS FOR INDONESIAN MIGRANT WORKERS (PMI) IN A NONPROCEDURAL BASIS FROM THE PERSPECTIVE OF LEGAL CERTAINTY (RESEARCH STUDY AT THE CLASS I IMMIGRATION OFFICE SPECIFICALLY IN BATAM)**

**Ricky Rahmawan<sup>1</sup>, Fadlan<sup>2</sup>, Erniyanti<sup>3</sup>**

<sup>1,2,3</sup>Faculty of Law Universitas Batam

Corresponding E-mail: <sup>1</sup>[masayu.rahmi33@gmail.com](mailto:masayu.rahmi33@gmail.com)

## **Abstract**

The departure of Indonesian Migrant Workers (PMI) was under the pretext of protecting Indonesian citizens abroad. This is certainly not in line with the constitution, so there needs to be improvements to the procedures for protecting Indonesian Migrant Workers (PMI). The domino effect is that these non-procedural Indonesian Migrant Workers (PMI) will continue to try to leave "like the theory of a squeezed balloon" or illegally via rat routes which will be very dangerous for these Indonesian Migrant Workers (PMI). Based on the research results, it was found that the factors causing the problem were due to the absence of norms (no governing law), there were no clear parameters between Indonesian citizens who were just passing through and Indonesian Migrant Workers (PMI). Then, during the passport interview process, Immigration officers also did not can predict whether a passport that is valid for 10 years will be used for tourism only or for work purposes. Especially in Batam and other border areas, officers will find it difficult to determine which are Illegal Indonesian Migrant Workers (PMI) and which are seasonal workers. For this reason, it is hoped that the inspection system implemented by the Immigration Office will begin with the completeness and authenticity of the documents required in the passport application process, namely verifying the authenticity of the data provided whether it is as requested or not, so that the role of immigration in combating transnational crime is very important. large and strategic, this is related to its duties and functions as a gatekeeper to Indonesian territory, regarding the flow of traffic entering Indonesia, immigration implements a selective policy (selective policy).

**Keywords:** *Immigration Control, Passports and Indonesian Migrant Workers.*

## **1. INTRODUCTION**

"The current condition is that UPT Immigration Offices throughout Indonesia are delaying the departure of many Indonesian Migrant Workers (PMI) who are suspected of working non-procedurally abroad, this of course has a domino effect, namely that these Non-Procedural Indonesian Migrant Workers (PMI) will still try to leave." like the theory of a squeezed balloon" Or illegally through rat routes which would be very dangerous for Indonesian Migrant Workers (PMI). In the author's view, it is true that every citizen has the right to work to meet the needs of life, whether working at home or abroad, this is of course mandated in the constitution. However, in reality, currently the state is actually hampering their opportunities to work abroad by delaying the departure of Indonesian Migrant Workers (PMI) under the pretext of protecting Indonesian citizens abroad. This is certainly not in line with the constitution, so there needs to be improvements to the procedures for protecting Indonesian Migrant Workers (PMI).

As Article 2 of Law Number 6 of 2011 concerning Immigration states: "every Indonesian citizen has the right to travel in and out of the Territory of Indonesia". Currently, society's view of immigration has changed its function to determine whether Indonesian Migrant Workers (PMI) can work abroad or not because it is related to the movement of people. With this view, there are

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individuals who take advantage of the rules and procedures to gain profits. This shows that procedures and requirements that are difficult to fulfill for Indonesian Migrant Workers (PMI) have an impact on the increase in Migrant Workers Indonesia (PMI) which departed non-procedurally and the growth of extortion in several agencies.

The factors causing the problem are due to the absence of norms (no governing law) there are no clear parameters between Indonesian citizens who are just passing through and Indonesian Migrant Workers (PMI). Then during the passport interview process, Immigration officers also cannot predict whether the passport which is valid for 10 years, will be used for tourism only or for work purposes. Especially in Batam and other border areas, officers will find it difficult to determine which are Illegal Indonesian Migrant Workers (PMI) and which are seasonal workers. Sometimes the root of the problem is that we like to trap ourselves in other people's problems. For example, Indonesian Migrant Workers (PMI) want to leave and the officer asks if they have a KTKLN, even though this is a matter for BP2MI. Or another example is that Indonesian citizens want to get a passport and then the officer asks which recommendation for Umrah is from the Ministry of Religion, even though that is none of our business. What concerns us is that the data submitted is valid data based on the Dukcapil system.

In the author's opinion, ease of procedures for Indonesian Migrant Workers (PMI) can be a solution to the problem of protecting Indonesian Migrant Workers (PMI). This can be initiated by Immigration in the form of preparing an MOU with related agencies such as BP2MI and the National Police. Apart from that, the government can also collaborate with the government of the destination country of Indonesian Migrant Workers (PMI) with a cooperation scheme between the Indonesian government and Malaysia, Arabia, etc. or government to government (G to G). We must restore the function of Immigration as an institution that only handles the traffic of people entering and leaving Indonesian territory, not extending it to protecting PMI.

Likewise with passports, when there is a problem with Indonesian Migrant Workers (PMI) abroad, why is it that the immigration authorities are always the scapegoats because they have issued passports for these Indonesian Migrant Workers (PMI). Even though immigration has fulfilled the rights of Indonesian Migrant Workers (PMI) as Indonesian citizens to travel between countries. It is true that Immigration has a supervisory function, but are the actions we take correct when delaying the departure of someone who is going abroad to earn a living? This is an irony that we need to introspect. Therefore, through this message, I hope you can make a breakthrough through a comprehensive policy to resolve the problem of the role of immigration in the protection of Indonesian Migrant Workers (PMI). Then, when Indonesian citizens are abroad, the role of the Ministry of Foreign Affairs or Indonesian Representatives abroad and BP2MI needs to be maximized by recording the whereabouts of those who have not registered as PMI and providing attention if they feel threatened by danger and so on. Regulation of inter-state traffic involving people in a country's territory is related to immigration aspects that apply in each country, which have a universal nature and are specific to each country in accordance with the values and needs of its state. . In Indonesia supervision against foreigners at the central level, this is carried out by the Directorate General of Immigration, at the provincial level by the Regional Law and Human Rights Office and at the Regency/City level by the Head of the Immigration Office. Supervision of foreigners is carried out starting from showing a visa at the Representative Office of the Republic of Indonesia abroad, entering the territory of the Republic of Indonesia and their whereabouts and

activities while in Indonesia, until the foreigner leaves Indonesian territory and returns to his country.

Law Number 6 of 2011 concerning Immigration, in article 1 states: "Immigration is a matter of the movement of people entering or leaving the territory of Indonesia and the supervision of foreigners in the territory of the Republic of Indonesia". Thus, according to Law Number 6 of 2011 concerning Immigration there are two important regulatory elements, namely: 1) Regulation of various matters regarding the movement of people leaving, entering and staying from and into the territory of the Republic of Indonesia; 2) Regulations regarding various matters regarding the supervision of foreigners in the territory of the Republic of Indonesia. The first element is regulating traffic in and out of Indonesian territory. Based on international law, this regulation is the right and authority of a country and is one of the manifestations and sovereignty as a legal state based on Pancasila and the 1945 Constitution, Law Number 6 of 2011 concerning Immigration does not differentiate between emigration and immigration. Furthermore, the regulation of traffic in and out of Indonesian territory must pass through immigration inspection points (TPI), namely at sea ports, airports, or certain places or other land designated by the minister of justice as places of entry or exit to Indonesian territory (entry points).

Violation of this provision is categorized as an act of entering Indonesian territory illegally, meaning that every act of entering and exiting the territory without going through an immigration checkpoint (TPI), is an act that can be punished. The second element and understanding of immigration is the supervision of foreigners in Indonesian territory. In this framework, "supervision" is the entire process of activities to control or supervise whether the task implementation process is in accordance with predetermined plans or rules. We need to know that one of the rules for entering a country for the needs and purposes as mentioned above is that a person must be able to show a valid document in the form of a travel document from their country of origin or commonly called a passport. The role of immigration as guardian of the country's gates is an important element that needs to be considered, because it is the first and last institution that handles the issue of departure and arrival of people from and out of the territory of a country. Public Policy in supporting Immigration Duties refers to Law no. 6 of 2011 concerning Immigration and formulated/established in :

1. Services to Indonesian citizens by providing passports for those who intend to travel abroad,
2. Providing services to Indonesian citizens or foreigners to enter or leave Indonesian territory as long as it is not hampered by law,
3. Prevent foreigners from entering/exiting or being in Indonesian territory for the reasons:
  - a. Hampered by law,
  - b. Causing a burden on the state (not beneficial to the interests of the state),
  - c. Does not give rise to security and social order, and
  - d. Do not suffer from infectious diseases.

In order to realize the principle of selective policy this and to guarantee the benefits of these foreigners and in order to support the maintenance of stability and national interests, state sovereignty, security and public order as well as vigilance against negative impacts arising from the crossing of people between countries, the presence and activities of foreigners in the territory of the Republic of Indonesia , it is deemed necessary to carry out supervision of foreigners and immigration actions in an appropriate, fast, thorough and coordinated manner, without neglecting openness in providing services to foreigners. A country's territory must have clear boundaries, both

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land, sea and air. A passport is an official document issued by an authorized official from a country which contains the identity of the holder and is valid for travel between countries. A passport contains the holder's biodata, which includes, among other things, the holder's photo, signature, place and date of birth, nationality information and sometimes also some other information regarding individual identification. There are times when a passport includes a list of countries that the passport holder is not permitted to enter.

Currently several countries have issued so-called e-passports or electronic passports. e-passport is a development of the current conventional passport where a chip has been implanted in the passport containing the holder's biodata along with biometric data. This biometric data is stored with the aim of ensuring that the person holding the passport is the person who owns and is entitled to it. the passport. A passport is usually required for international travel as it must be presented when entering a country's borders, although in certain countries there are some agreements where citizens of certain countries can enter other countries with documents other than a passport. .

The passport will be stamped or sealed with a visa issued by an official from the country of arrival. Immigration law enforcement starts from the starting point of immigration matters which include supervision of the movement of people entering and leaving the territory of the Republic of Indonesia and supervision of foreigners in the territory of Indonesia. Immigration officials have the authority to carry out immigration administration actions against those in the territory of Indonesia who carry out dangerous activities and are suspected of endangering security and public order or do not respect or obey laws and regulations. Based on this background of thought, the problem can be formulated as follows:

1. How legal arrangements role and responsibility of immigration supervision over the use of passports for Indonesian migrant workers (PMI) non-procedurally from the perspective of legal certainty.?
2. How is it implemented? role and responsibility of immigration supervision over the use of passports for Indonesian migrant workers (PMI) non-procedurally from the perspective of legal certainty.?
3. What factors are obstacles/obstacles and solutions to role and responsibility of immigration supervision over the use of passports for Indonesian migrant workers (PMI) non-procedurally from the perspective of legal certainty.?

## **2. RESEARCH METHODS**

The research method explains the entire series of activities that will be carried out in order to answer the main problem to prove the assumptions put forward. The research method used in this research is combined normative and empirical research with a juridical approach.

## **3. RESEARCH RESULTS AND DISCUSSION**

### **3.1 Legal Arrangements Roles and Responsibilities of Immigration Supervision on the Use of Passports for Indonesian Migrant Workers (PMI) Non-Procedurally in the Perspective of Legal Certainty**

Juridically, Article 1 Number (1) of Law Number 6 of 2011 concerning Immigration (hereinafter referred to as Law No. 6 of 2011) confirms the following: "Immigration is a matter regarding the movement of people entering or leaving the Indonesian Territory and its supervision

in the context of maintain the upholding of state sovereignty". Article 1 Number (3) states that the four functions of immigration are: (i) community service, (ii) law enforcement, (ii) state security, (iv) development of community welfare, so immigration has an important role in maintaining state sovereignty. In Article 8 of Law no. 6 of 2011 explains that every person entering or leaving the territory of Indonesia must have a travel document, namely an official document issued by an authorized official from a country which contains the identity of the holder and is valid for traveling between countries. .

Without having a valid and valid travel document (passport), no one can be allowed to enter or leave the territory of Indonesia. One of the many legal provisions in Law no. 6 of 2011 which is the "special Immigration rule" is of course Article 75 Paragraph (1) of Law No. 6 of 2011. This article states that: "Immigration Officials have the authority to carry out Immigration Administrative Actions against Foreigners residing in Indonesian Territory who carry out dangerous and inappropriate activities. suspected of endangering security and public order or not respecting or disobeying laws and regulations." Whether we realize it or not, this article is a legal rule that is the basis for every Immigration Officer to be able to optimally guard and guard the country's gates from any threat from foreigners who want to enter Indonesian territory.

Based on this article, every Immigration Officer can take administrative action in the form of inclusion in the prevention or deterrence list, restriction, change or cancellation of a Stay Permit, imposition of burden fees, and even deportation from Indonesian territory (see Article 75 paragraph 2 of Law No. 6 of 2011 ). Immigration officials who carry out the administrative action in question can rely on the "presumptive" clause alone, or assume that the foreigner has no benefit (benefit principle) for the Indonesian state, based on the selective policy principle. So in this case the presumption of innocence principle does not apply, as understood in the Criminal Procedure Law. This is different if we equate it with the *pro justitia* (law enforcement) process in the field of criminal law which must be based on two pieces of valid evidence and the judge's belief (Article 183 of the Criminal Procedure Code). Herein lies the exclusive rights (privilege rights) of every Immigration Officer which are not owned by law enforcers in other agencies. A typical article that embodies state sovereignty. Based on data collected by the author from the website [immigration.go.id](http://immigration.go.id) as of October 14 2014, there are 203 Immigration Checkpoints (TPI) spread throughout Indonesia (conventional and traditional), consisting of 91 seaports, 33 airports and 79 cross-border posts. The existence of this many TPIs certainly makes the role of Immigration institutions very important. TPI is a reflection of the sovereignty of an imaginary country determined by the Immigration Authority. The existence of TPI is closely related to the Immigration Area. Article 22 paragraph (2) Law no. 6 of 2011 determines that the immigration area is a limited area that can only be passed by passengers or crew of transport equipment who are leaving or entering Indonesian territory or authorized officials and officers. As an international area marked by a yellow line, the immigration area has a position that is as important as the sovereignty of a country .

Even though it is only an imaginary line, the Immigration Area represents the authority of the country. Article 22 paragraph (3) Law no. 6 of 2011 states that: "The Head of the Immigration Office together with the organizers of airports, seaports and border posts determines the immigration area as intended in Paragraph (1)." Therefore, the area of immigration has a clear legal position and must be respected. In reality, Immigration Areas cannot be fully understood by some parties as the sovereignty of a State. After the implementation of Presidential Regulation Number 21 of 2016 concerning Free Visitor Visas, the number of foreign nationals coming to Indonesia

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increased sharply. Based on data from the Central Statistics Agency (BPS), the number of visits by foreign tourists or foreign tourists in a broad sense to Indonesia. The implementation of the visa-free visit policy has had a very significant impact on the field of immigration services for foreigners. Services for extending residence permits and purchasing Visa on Arrival (VOA) have experienced a very significant decline. This is because, the countries that are given visa-free visiting facilities are mostly VOA subject countries. Visa Waiver Policy Visits and changes in requirements for foreign workers are a few regulations that open the door to the influx of Chinese citizens to Indonesia. The increasing number is inseparable from the policy made by President Joko Widodo, namely the Visit Visa Free Policy. In terms of international law, this policy must pay attention to the principle of reciprocity which creates reciprocal relations between party states.

But in fact this is not the case. The Visa Free Policy rolled out by the government does not respect this principle. For example, Indonesia provides visa-free access to several countries such as the United States, England, the Netherlands and China. However, these countries did not provide the opposite policy to Indonesia. Based on the provisions of the Minister of Manpower and Transmigration Regulation (Permenakertrans) No. 16 of 2015 and Decree of the Minister of Manpower and Transmigration No. 15 of 2015, foreign workers working in Indonesia can only hold certain positions, have special skills and be professionals in their field. Normatively, expatriates who can work in Indonesia are specialist workers whose skills are not owned by the local community. The majority of Chinese workers (illegal) are unskilled workers, who work not based on qualifications and certain skills. It must be realized that the majority of immigration violations committed by Chinese citizens in Indonesia involve carrying out activities that are not in accordance with the residence permits that have been granted. Apart from that, they also cannot show their passport and residence permit, because they are held by the sponsor.

Most of them are subject to Article 116 and Article 122 letter a of Law no. 6 of 2011 concerning Immigration. Article 116 Law no. 6 of 2011 determines that "Every foreigner who does not carry out his obligations as intended in Article 71 shall be punished with imprisonment for a maximum of 3 (three) months or a fine of a maximum of Rp. 25,000,000 (twenty five million rupiah)." Article 71 regulates that "Every foreigner who is in the territory of Indonesia is obliged to: (a) provide all necessary information regarding the identity of himself and/or his family and report any change in civil status, citizenship, employment, Guarantor, or change of address to the local Immigration Office ; or (b) show and submit the Travel Documents or Stay Permit they have if requested by the Immigration Officer in charge of Immigration supervision." Then Article 122 letter a of Law no. 6 of 2011 regulates that "Every foreigner who deliberately misuses or carries out activities that are not in accordance with the aims and objectives of the residence permit granted to him, shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000 (five hundred million rupiah). "

Immigration Law is the law that regulates the incoming and outgoing traffic of people. In this arrangement, serious attention must be paid to the balance between national interests and global interests. To ensure this balance, in carrying out the immigration function it is necessary to pay attention to the following principles :

1. The principle that Indonesia is a non-immigrant state  
This principle is in no way intended to limit or even reject the presence of foreigners in Indonesian territory. This principle aims to limit as much as possible the increase in population (citizens) through a citizenship process that is based on immigration rights.
2. 'Selective Policy Principle  
Immigration facilities for foreigners should seriously pay attention to their benefits for development efforts and efforts to achieve prosperity for the Indonesian people.
3. The principle of balance between welfare (prosperity) and security  
Is the principle of balance between supervision, control and service. Foreigners are guests, and therefore must be treated appropriately both in legal and social relationships.
4. The principle of the right of movement.  
Every person within the territory of the Republic of Indonesia is guaranteed and protected in their rights to travel, including the right to communicate, as long as they do not endanger themselves or the special interests of the State.

So that immigration is part of the administration of the State, in this principle Immigration must always run on the general principles of proper State administration (general principle of good administration ). Whereas in essence Indonesian immigration aims for the welfare of Indonesian citizens in general and foreign citizens in particular as stated in the Draft Conference of Law number 6 of 2011, among other things, explains that Immigration is part of the implementation of upholding sovereignty over the territory of Indonesia in order to maintain orderly national and state life towards a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Immigration law enforcement starts from the starting point of immigration matters which include supervision of the movement of people entering and leaving the territory of the Republic of Indonesia and supervision of foreigners in the territory of Indonesia. Immigration officials have the authority to carry out immigration administration actions against those in the territory of Indonesia who carry out dangerous activities and are suspected of endangering security and public order or do not respect or obey laws and regulations. The deportation decision is issued by the authorized Immigration official, namely the Head of the Immigration Office, no later than 7 (seven) days from the date of the decision.

### **3.2 Implementation of role and responsibility of immigration supervision over the use of passports for Indonesian migrant workers (PMI) in a non-procedural manner from the perspective of legal certainty**

Providing immigration service facilities, such as granting entry permits, re-entry permits, multiple re-entry permits, and various stay permits (stopover permits, visit permits, limited stay permits, permanent residence permit) is part of the immigration role. Likewise with aspects of supervision of foreigners, including restrictions imposed on foreigners to obtain entry or residence permits in a country, whether as job seekers or investors. This is intended to protect its citizens from an economic perspective in facing life's competition. Nowadays, there has been a change in the immigration paradigm in various countries. Some developed countries which initially carried out immigration duties and functions with an orientation towards service and human rights (HAM) aspects, have now shifted to a security orientation and development facilitator. Even more so since the issue of terrorism has risen. On the contrary, developing countries have begun to abandon the emphasis on security orientation towards a human rights orientation. This certainly affects the

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implementation of immigration functions, both in terms of policy and operational aspects in the field. The orientation of implementing immigration duties and functions is not only on community service, but must pay attention to the balance between community service, state security and as a development facilitator. This means that of these three functions, immigration policy must also pay attention to cost and benefit factors, and examine all aspects in a fair and balanced manner.

Service Immigration such as passports is a social and managerial process because the Immigration Office and Passport Applicants obtain their needs and expectations by creating, offering and exchanging something of value with each other or there is a need for quality interaction. This is of course done with systematic and calculated planning. Therefore, an effort is needed to meet the need for excellent service quality, so that the dominant factors that influence improving service quality are obtained. In the context of increasing traffic and human mobilization, the role of the immigration function becomes an important and strategic part, namely minimizing negative impacts and encouraging positive impacts arising from the arrival of foreigners from the time they enter, during their stay and carrying out activities in Indonesia until they leave the territory of the country. Criminal acts in the immigration sector are at an alarming level because they occur and are carried out in plain sight. Cases regarding visa abuse have recently been more dominant compared to other immigration crimes. Not only that, we also have to be faced with an attitude of helplessness by the authorities in dealing with and handling the actions of criminals in the immigration sector, but unfortunately there are still many cases that arise that cannot be taken to court. Broadly speaking, this is due to the high choice of administrative action processes, an organizational structure that does not support the investigation of immigration crimes and a lack of coordination between Police investigators and Immigration Civil Servant Investigators. This less conducive situation must be immediately found to resolve the problem. Handling of immigration crimes can run well. With these considerations in mind, Law Number 6 of 2011 concerning Immigration is considered more comprehensive in order to optimize the function of immigration in adapting to developments in the current era of globalization.

At the TPI Batam Special Class I Immigration Office, there is an Immigration Supervision and Enforcement Division which has the task of carrying out immigration supervision and enforcement against foreigners within the relevant Immigration Office based on applicable laws and regulations. The functions of the Immigration Supervision and Enforcement Division are: 1) monitoring violations of immigration permits and establishing cooperation between agencies in the field of supervision of foreigners; 2) carry out investigations and take action against immigration violations. There is a chart of the Immigration Crime investigation process used by Civil Servant Investigators (PPNS) of the Class I Special Immigration Office for TPI Batam. There is a chart of the Immigration Crime investigation process used by Civil Servant Investigators (PPNS) of the TPI Batam Special Class I Immigration Office. Even though there are already immigration Civil Servant Investigators (PPNS), this does not mean that police investigators no longer have the right to investigate immigration cases. Investigating immigration crimes is one of the duties of the police in the context of law enforcement. In Police Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Article 14 paragraph (1) point g, it is stated that the police are tasked with carrying out inquiries and investigations into all criminal acts in accordance with the criminal procedural law and other statutory regulations.



Immigration is included in a criminal offense so legal action can be taken by police investigators. Thus, the existence of immigration PPNS is not an obstacle to police work. However, based on substantial provisions of the law, immigration PPNS can carry out functional relationships with authority, such as coordinating legal actions, supervision, with police investigators and the prosecutor's office or even taking over immigration cases in accordance with the requirements determined by law. Based on the law, these two state institutions can and/or have the opportunity to combine their authority functions to work together in eradicating immigration crimes, including coordination, supervision and exchanging intelligence information regarding immigration crimes that occur and sharing data about the progress of the cases being handled. Both of them can also synchronize the data obtained regarding immigration cases so that each institution complements each other if there is missing data. The coordination and supervision relationship between immigration Civil Servant Investigators (PPNS) and the National Police of the Republic of Indonesia is further clarified in Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law No. 6 of 2011 concerning Immigration in Article 249 which contains provisions:

- 1) Migration Civil Servant Investigators (PPNS) as referred to in Article 248 in carrying out investigations coordinate with investigators from the State Police of the Republic of Indonesia.
- 2) Immigration Civil Servant (PPNS) investigators as referred to in paragraph (1) from the start of the investigation are obliged to notify in writing about the investigation into immigration criminal acts to investigators from the State Police of the Republic of Indonesia.
- 3) After completing the investigation, the Immigration Civil Servant Investigator (PPNS) submits the case files to the public prosecutor.

The purpose of Article 249 of Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law No. 6 of 2011 concerning Immigration means that for every immigration case that occurs in Indonesia, Immigration Civil Servant Investigators (PPNS) have the authority to handle the immigration case. However, in carrying out investigations, Immigration Civil Servant Investigators (PPNS) are required to coordinate with the National Police by making a written report about the investigation carried out by the Police in Article 7 of the Criminal Procedure Code which is stated as coordinating and supervising. But not to the agency, but to its investigative activities.

### **3.3 Barriers/obstacles and solutions to the role and responsibility of immigration supervision over the use of passports for Indonesian migrant workers (PMI) in a non-procedural manner from the perspective of legal certainty**

Non-procedural Indonesian migrant workers are defined as Indonesian citizens who work abroad without following correct placement procedures, including: falsifying documents and manipulating data on prospective Indonesian migrant workers, incomplete documents, ignoring the procedures and mechanisms for placing Indonesian migrant workers that have been regulated. by applicable laws and legal provisions, not using a work visa, with the help of individuals, both groups and individuals. There are four main causes of non-procedural TKI. Through the socialization program, the law on the protection of Indonesian Migrant Workers (PMI) needs to be promoted as an effort to prevent non-procedural migrant workers from entering and leaving the country. Undocumented workers will experience serious problems because of the threat of legal

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protection for those concerned and weakening their bargaining position with users of labor services.

Protection of Indonesian Migrant Workers (PMI) is implemented through various efforts, for example in Law Number 18 of 2017 containing the Protection of Indonesian Migrant Workers, which was created to represent the government's mission when implementing the protection of migrant workers abroad. Protection by the government is divided into 3 (three) stages, namely:

1. Before work.

The implementation of protection related to pre-employment can be divided into two types: technical protection in the form of administrative and information protection relating to the integrity and validity of work documents, quality improvement through training and practice, social security and leadership and safeguarding of employees.

2. During Work.

While working abroad, supervision is guaranteed by collecting and recording data on work assistants or foreign officials, checking workers' conditions, facilitating the realization of rights, resolving cases that occur among workers and repatriation.

3. After Work.

Oversight is allocated by facilitating the repatriation and treatment of migrant workers who fall ill to death, their rehabilitation and reintegration into society, and by clarifying migrant workers' unfulfilled rights such as loss of wages. Through one of the articles in Law Number 18 of 2017 concerning the protection of Indonesian migrant workers, namely article 5, it is explained below that there are several conditions that must be fulfilled by every migrant worker before working abroad, including age, competence, physical and spiritual health, registered in social security and have complete documents required. However, if migrant workers leave without using applicable procedures and provisions, they will be very vulnerable to human rights violations and losses as well as other problems. Therefore, the author will explain several top solution the role and responsibility of immigration supervision over the use of passports for Indonesian migrant workers (PMI) in a non-procedural manner from the perspective of legal certainty.

#### **4. EXTERNAL FACTORS**

Economic problems in Indonesia that have not been resolved from the past until now are: The population growth rate continues to increase every year, Indonesia is ranked fourth with the largest population after China, India, and the United States. Population growth which continues to increase will directly affect the number of workers and unemployment rates. According to data recorded by BPS Indonesia, the population of Indonesia in 2010 was 237.63 million people and in 2020 it was 270.2 million people, with an average increase of 32.56 million people every year. But this is not accompanied by the availability of job opportunities. As a result, unemployment & poverty become very common things in society.

Indonesian Migrant Workers (PMI) is a government effort or program that aims to take advantage of available international employment opportunities, so that unemployment and poverty in Indonesia are reduced. This government program is stated in Republic of Indonesia Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (PMI/TKI), which states that the placement of Indonesian Migrant Workers abroad is an effort to realize equal rights and opportunities for workers to obtain work. and decent income and its implementation is carried out

while taking into account dignity, human rights and legal protection as well as equal employment opportunities and the provision of labor in accordance with national law. Conditions such as strengthening communities to carry out international migration. This international migration is caused by economic differences between countries, low wage levels, difficulty in obtaining adequate work in developing countries and the existence of job opportunities and high wages in destination countries. Another factor that influences overseas migration is individual characteristics consisting of age, education level and type of work. There are several influencing factors including:

1. Large demand for workers from overseas companies for low-skill jobs (refineries, plantations, domestic workers)

The demand for labor is influenced by the demand for a production good, so companies will add labor to their production if the demand for production goods increases. Labor supply analysis assumes that there is no change in the number of labor population or changes in skill levels. To analyze the impact of changes in wage levels on the labor supply, substitution effects and income effects can be used. Through the substitution effect, changes in wages cause changes in the opportunity cost of free time so that spending free time becomes more expensive, which ultimately reduces free time and increases working hours. This non-procedural PMI is used as a factor in making people want to visit abroad. On the part of workers, they will also be accustomed to the mindset that working in a foreign country or country is mandatory to always comply with the rules in that country, when working they are also obliged to carry out according to the responsibilities and obligations that have been agreed between the agency sending Indonesian migrant workers and with an agreement from his employer.

2. The salary offered is higher than in the country

According to research results. Researchers concluded that there was an increase in income from before migrating to when migrating, this created a positive thing where the income sent could be used for family needs and to help. Family economy. However, income after migrating again decreased because they were not wise in managing their income. This proves that there is an economic problem where low income encourages individuals to migrate and after migrating the resulting income returns to a low position. This explains that there will be migration activities that will be repeated.

3. The procedural placement process takes time and is quite a long process, especially work visas from the government of the placement country.

Indonesian Migrant Workers (PMI) themselves are divided into 2 (two), namely formal and informal sector PMI. Formal sector PMIs are those who work abroad in various companies or organizations that are legal entities. Meanwhile, PMI in the informal sector or what are usually called "domestic workers" or household administrators are those who work abroad for individual users who are not legal entities. In its implementation, prospective Indonesian Migrant Workers (PMI) at the regional level fulfill the requirements as job seekers working abroad through government agencies in the field of employment. PMI candidates are vulnerable to fraudulent crimes committed by individuals who promise ease of getting a job, high salaries or wages and ease of fulfilling permits and requirements. Prospective Indonesian Migrant Workers (PMI) who want work abroad immediately are non-procedural Indonesian Migrant Workers (PMI) because they do not complete the required documents which should be submitted to the local employment agency.

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In general, placement activities for Indonesian Migrant Workers (PMI) are divided into 3 (three) stages, namely the pre-placement stage, placement stage and post-placement stage.

- a. The pre-placement stage includes activities for arranging placement permits, recruitment and selection, education and job training, health and psychological examinations, document processing, competency tests, final debriefing and departure.
- b. The placement stage, where Indonesian Migrant Workers (PMI) are required to report their arrival to the representative of the Republic of Indonesia (RI) in the destination country, and carry out work according to the work agreement agreed and signed by the Indonesian Migrant Worker (PMI) concerned.
- c. The post-placement stage includes providing convenience or facilities for the return of Indonesian Migrant Workers (PMI), providing health care for Indonesian Migrant Workers (PMI) who are sick on their return, and providing efforts to protect Indonesian Migrant Workers (PMI) from possible actions by other parties. which is irresponsible and could harm Indonesian Migrant Workers (PMI) when they return home. To become an Indonesian Migrant Worker (PMI) you must go through official or procedural channels. One of them must go through the stages of the official implementation process for the placement of Indonesian private workers (PPTKIS). Sometimes Non-Procedural Indonesian Migrant Workers (PMI) do not want to follow all forms of processes that have been determined by statutory regulations, they assume that the process they will face will be difficult so they tend not to apply officially. So if a problem occurs while working in another country, it will cause big problems, so that aspects of legal protection that should be obtained tend not to be implemented. Legal protection is a form of protection that aims to create protection for Indonesian Migrant Workers which provides rights for PMI as complete human beings regarding their safety, health, decent wages and so on. Legal and illegal PMI who are deported must receive the same guarantee of social protection by the Government, without discrimination and gaps in obtaining their rights because this concerns human rights and the basic rights of these PMI.

4. The majority of Indonesian migrant workers come from outside the Riau Islands

Due to the limited job vacancies in Indonesia, many people try their luck and choose to work abroad. Moreover, this is supported by the promise of a large salary, unlike the salary they would get if they worked in Indonesia. However, not all of this comes true. Not a few migrant workers who try their luck abroad via Batam City come from originating from various regions in West Sumatra, West Java, Central Java, East Java, West Nusa Tenggara and West Kalimantan. This is a long-term obstacle that Batam City will face.

5. There are many unofficial ports that cannot be monitored

Preventive and repressive efforts are needed to deal with the presence of Non-Procedural Indonesian Migrant Workers (PMI) because the condition of the Riau Islands region is that the sea is so vast and makes the Riau Islands, especially Batam, one of the youngest gateways for Non-Procedural Indonesian Migrant Workers (PMI). Repressive efforts are felt to be lacking because these efforts can be carried out when there are already problems with Indonesian Migrant Workers (PMI), efforts are needed to approach the community by increasing legal awareness in the

community and awareness of the dangers of being a Non-Procedural Indonesian Migrant Worker (PMI). For this reason, this requires close collaboration and synergy between institutions, as well as community support and participation through educational activities for village communities regarding the prevention of non-procedural migrant workers, increasing the level of public awareness of the dangers of becoming a Non-Procedural Indonesian Migrant Worker (PMI).

6. Widespread Syndication of Illegal Placement of Indonesian Migrant Workers (PMI), and high potential for the Crime of Human Trafficking (TPPO)).

The crime of trafficking in persons (TPPO) across borders and internally, especially for labor and sexual exploitation. Most of the victims of cross-border trafficking are female migrants who are trafficked through labor recruitment channels. The phenomenon of victims of human trafficking in Indonesia is Indonesian Migrant Workers (PMI), who generally are women who have no skills, come from rural areas with low levels of education and have little choice but to become workers abroad. There are various causes that encourage this to happen, among which the dominant factors are poverty, unavailability of employment opportunities, changes in development orientation from agriculture to industry and the never-ending economic crisis. In the current news, the phenomenon of human trafficking has been declared a serious global problem and has even become a global business that has provided huge profits to the perpetrators. However, these workers are not protected by labor regulations in Indonesia or the destination country. Because these female workers work in the private homes of their employers, hidden from public observation, their situation like this makes them vulnerable to violence and exploitation.

## 5. INTERNAL FACTORS

One of Indonesia's problems is cross-border security. Cross-border security is often used by some groups to "insert" illegal Indonesian migrant workers abroad, such as Malaysia and Singapore. The border crossing between Batam and Johor is one of the syndicates' choices for human smuggling and human trafficking activities. This illegal delivery mode has two patterns, namely first, legal entry and illegal stay, and second, illegal entry and illegal stay. These two patterns are often exploited by syndicates of transnational crime organizations to smuggle victims of illegal Indonesian female trafficking to Malaysia. Legal entry and illegal stay means that entering a country is legal because it goes through legal channels and uses valid documents. However, the activities carried out in the destination country are not in accordance with the residence permit granted. In practice, this pattern uses a tourist visa as a legal entry, but in fact its presence in the destination country is an illegal stay due to misuse of the residence permit.

Impact and preventative solutions for non-procedural Indonesian Migrant Workers (PMI).

1. Control of Providing Indonesian Passports through Examination

The inspection system run by the Immigration Office begins with the completeness and authenticity of the documents required in the passport application process, namely verifying the authenticity of the data provided whether it is as requested or not. Considering the authenticity of the data is very important because it shows that the truth of the application is required in obtaining a passport. The accuracy of the immigration authorities is very necessary in selecting the authenticity of the passport application document which then becomes genuine to prevent misuse of the passport function, in the form of checking the passport application document for the original document form, correspondence of the candidate's name with the name in the document, the adequacy of the age of the candidate's passport and completeness of the document. Based on these

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forms, the immigration authorities can avoid non-procedural PMI by selecting document files where the immigration office has the right not to issue a passport based on the applicant's request, therefore, violations detected during the inspection of the applicant's documents are identified, checked with the people who is involved in coordinating passport application documents. This is one of the duties and responsibilities of immigration in preventing the creation of non-procedural Indonesian Migrant Workers (PMI). The Immigration Office's accuracy and foresight in examining these documents is very important in avoiding the occurrence of non-procedural PMI

2. Strengthening Coordination Between Law Enforcement Agencies

There are different tasks related to border security functions between border control and immigration control. The implementation of immigration control is carried out by immigration institutions as a responsible effort to enforce immigration law. Meanwhile, the implementation of border control is carried out by various institutional collaborations such as police, customs, transportation, maritime and others. Border security threats related to immigration control and border control that need attention include transnational crime, territorial boundaries, mobility of people and goods that require cooperation to prevent them. In this case, the state must be present and able to make efforts to prevent border security threats that are not specific through conventional efforts alone, but also require contemporary efforts including involving community control. Border crossing is closely related to the threat of transnational crime against the flow of people and goods from one country to another. One of the criminal threat actors across borders is illegal migrants (unauthorized migrants).

Illegal migrants are motivated to realize personal opportunities based on job opportunities, improving the economy, family relationships, dangerous conditions and difficulties in their country of origin through illegal migrants. In addition, border security threats are related to transnational crimes in the form of human smuggling and human trafficking. The similarities in the understanding of smuggling and human trafficking are: first, both involve recruitment for the promise of a better life; second, both involve transportation by taking advantage of weak border controls, corruption, and relationships between local and international organizers regulated by criminal networks; and third, the involvement of the same organizations in smuggling and trafficking and their cooperation both nationally and internationally in order to facilitate their activities. The close relationship between smuggling and human trafficking activities on transnational routes, together involving transportation and organizations managed by criminal networks.

## 6. CONCLUSION

Based on the results of research conducted by the author, the author can draw conclusions including:

1. Law Number 6 of 2011 concerning Immigration is considered more comprehensive in order to optimize the function of immigration in adapting to developments in the current era of globalization regarding the traffic of people entering and exiting Indonesian territory and its supervision in order to maintain the sovereignty of the State. That the provisions regarding criminal acts in the Immigration sector, total 23 articles, and are contained in articles 113, up to article 136. Apart from that, Law Number 18 of 2017 concerning the protection of Indonesian migrant workers has strictly regulated the mechanisms in the

process of departing Migrant Workers Indonesia (PMI), the activity of smuggling victims of illegal Indonesian trafficking through Indonesian Migrant Workers (PMI), is very anomalous to date and tends to increase in quantity. Weak cross-border controls are a contributing factor to prevention efforts. There are two modes of delivery, namely legal entry and illegal stay and illegal entry and illegal stay, which are still the choice of transnational crime organization syndicates.

2. The inspection system implemented by the Immigration Office begins with the completeness and authenticity of the documents required in the passport application process, namely verifying the authenticity of the data provided whether it is as requested or not, so that the role of immigration in combating transnational crime is very large and strategic, This is related to its duties and functions as a gate guard for Indonesian territory, regarding the traffic flow of foreigners entering Indonesia, immigration implements a selective policy for foreigners, namely only foreigners who provide benefits and do not disturb security and order. permitted to enter Indonesian territory.
3. The obstacles/obstacles and solutions presented are a) The large demand for workers from companies abroad for low-skill jobs (refineries, plantations, domestic workers), b) The salaries offered are higher than domestic ones; c) The procedural placement process takes quite a long time and is a long process, especially work visas from the government of the placement country; d) a mindset that prioritizes instant results without complying with applicable procedures. e) The view that processing employment documents is complicated and costs a lot of money, time and energy; f) Passing work patterns that have been going on for decades; g) there are families who have settled overseas (such as in Malaysia and Singapore and set up a business, then invite them to work in their business. Meanwhile, the expected solution is: a) Controlling the Provision of Indonesian Passports through Examination and b) Strengthening Coordination Between Law Enforcement Agencies .

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