



Impact of The Covid-19 Pandemic for Overstaying in Bali (Law's Application of The Government to Responding People Smuggling)

Adji Priyo Utomo*, Fernandez Viky Lieyanto and I Made Dwi Darma Putra Duatra

Immigration Polytechnic Human Resources Development Agency for Law and Human Rights
Ministry of Law and Human Rights RI

*Email: adjiprio732@gmail.com

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Abstract

This scientific work was created to find out how the regulations are binding on permits for foreigners to stay in the territory of Indonesia and how to handle foreigners who have lived beyond the time limit of the permits granted (overstay) during this pandemic, especially in the Bali area. The research method used is normative juridical, so it can be concluded: bthat the binding regulations regarding overstay are Law No. 6 of 2011 as well as several recently issued regulations regarding residence permits. One of them is Permenkumham number 32 of 2021. From the example of the case in the TPI Denpasar class I immigration office, it can be said that overstay cases during the pandemic are very natural and may even occur periodically due to the effects of a long pandemic. This could be due to overlapping government policies as well as very complex immigration-related regulations during this pandemic and the fragmentation of rules that made it difficult for foreigners in Indonesia to take care of immigration-related matters.

Keywords: exceeding the deadline; covid-19 pandemic; stay permit

INTRODUCTION

The covid-19 pandemic is an epidemic that spreads throughout the world that affects all government sectors, immigration is also affected by the spread of covid-19 from the temporary closure of people's traffic in and out of Indonesian territory to special permits for foreigners living throughout Indonesia in the form of permits emergency stay.

The presence of COVID-19 has also caused new problems in the immigration sector, one of which is the large number of foreigners who overstay because they do not renew their residence permits. Prior to the COVID-19 pandemic, Indonesia provided visa-free visits (BVK) to 169 (one hundred and sixty-nine) countries. However, due to the COVID-19 pandemic, it has been temporarily suspended to grant a visa-free visit. With the termination of the BVK, many foreigners are not allowed to enter Indonesian territory. In addition to these two impacts, with the Covid-19 pandemic, services at the immigration office also cannot run optimally because employees at the immigration office work WFH or alternately.

With so many cases of overstay, this research examine what makes this increase in residence permit cases increase. A review of regulations regarding the renewal of residence permits for foreigners in Indonesia is urgently needed to respond to existing problems in the country, which refers to the current state and condition of the COVID-19 pandemic.

A study conducted by (Mutaqin et al., 2021) have previously examined Law's

Application of The Government to Responding People Smuggling. This study discussed the role of the government in implementing legal policies in cases of people smuggling in Indonesia. The result of this study showed that people smuggling has been criminalized as transnational organized crime and included in the immigration law instruments in Indonesia. Another similar study also conducted by (Dananjaya et al, 2021) that analyzed the Indonesian government policy in the field of immigration during the Covid-19 pandemic and the implementation of immigration control of foreign citizens holding visa-free visits during the Covid-19 pandemic in the city of Denpasar. The result of this study showed that the policy adopted by the government was the Regulation of the Minister of Law and Human Rights No. 8 of 2020 concerning Temporary Cessation of Visit Visa and Visit Visa on Arrival and Granting a Stay Permit in a State of Force. The effectiveness of its implementation is not yet effective because immigration can only monitor activities based on data sources from social media and heads of the environment and the data is not accurate, so it needs to be refined using a data application system for mapping foreigners based on the type of residence permit and located in each region.

Based on the explanations and the previous studies above, this study aims to examine the binding regulations regarding overstay and the residence permit handled during the pandemic.

METHOD

The research was conducted in a normative category in research, which is related to the legal politics of a country. In another sense, the law is aspired to, analyzes, explains, and develops a political legal framework regarding people smuggling. The research style approach used is the concept of a statutory approach and a conceptual approach. The collection of legal materials is carried out in the form of an inventory and identification of laws and regulations, research library materials (writings or scientific works), as well as other sources of legal materials that have relevance to legal issues regarding this research. The technique of analyzing legal problems in this research is carried out through mixed logic thinking. This means that the study of law that combines inductive and deductive ways of thinking is factual and concrete. The mixed logic that occurs includes: abstraction (law), legal principles, legal values, norms and legal concepts that are generally formulated in positive legal rules, then concretized (interpreted) and begin to be applied to resolve certain laws they face.

RESULT AND DISCUSSION

Foreigners who will visit or stay in the territory of Indonesia for a certain period of time will be given an immigration permit on the basis that the person concerned has a valid residence permit and can be accounted for while in Indonesia. Referring to Law No. 6 of 2011 concerning Immigration which is stated in Article 1 number 21, "Stay Permit is a permit granted to foreigners by immigration officials or foreign service officials to be in Indonesian territory". There are 5 types of Stay Permits that are currently applied and valid in Indonesia in accordance with immigration laws, namely Diplomatic Residence Permits, Official Residence Permits, Visit Stay Permits, Limited Stay Permits, Permanent Stay Permits.

Diplomatic Stay Permit is a permit intended by a citizen to enter the territory of Indonesia and is given directly by the appointed authorized official to carry out diplomatic duties while in the territory of Indonesia. If there is an entry sign for a foreigner who has the right to hold a diplomatic visa and is making a short visit in the territory of Indonesia, this can also be stated as the subject of a valid and valid Diplomatic Stay Permit. Staying Service Permit is a permit that is addressed to a foreigner who holds a service visa to the territory of Indonesia and has the right to stay in Indonesia to carry out official duties, and as long as the task is not diplomatic in nature. In general, based on the applicable rules, this residence permit is given for the purpose of visiting or staying while in the territory of the Republic of Indonesia.

Visit Stay Permit, which is also known as ITK, can be directed to foreigners whose presence in the Indonesian area is not long or relatively short. The validity period for

granting a visit stay permit and at the same time granting a visit visa, is set for a period of 60 days and if it is more than 60 days, it is declared a violation or overstay. Limited Stay Permit in its designation when abbreviated to ITAS is a residence permit granted to foreigners who reside in the territory of Indonesia on a limited basis. The subject of ITAS is the owner of a Limited Stay Visa and foreigners are involved in changing the status of a visit stay permit to a limited stay permit. ITAS can be owned by family or foreigners who are officially married to Indonesian citizens. The validity period given to ITAS holders is a maximum of two years and can be immediately extended. However, there is a difference for the subject of the Limited Stay Visa holder upon arrival where the subject of this owner is only given a period of 30 days and also has the disadvantage that it cannot be extended. Permanent Stay Permit, which it often refers to as ITAP, is a residence permit in the territory of Indonesia and is granted to foreigners on a permanent basis. Based on law number 6 of 2011 article 54 paragraph 1 it is explained that ITAP can be applied or given to subjects, namely foreigners who hold ITAS who are categorized as workers, investors, clergy to people who have reached old age. Other subjects who become ITAP holders in Indonesia include: families due to mixed marriages, both spouse and/or children where the parents are foreigners who own ITAP, foreigners who were previously Indonesian citizens and former bipatrid children who have chosen a different nationality. The exception to the provision of ITAP is to foreigners who previously did not have an official national passport from their country of origin. The permit period for permanent residence here is valid for 5 years and can be extended indefinitely.

Legal Basis

In analyzing the case related to the misuse of the residence permit (overstay) imposed on the Ukrainian citizen Viktoriia Zolotarevych, it is necessary to have a strong legal basis related to the residence permit. In general, in the field of immigration, residence permits are regulated in Law Number 6 of 2011 which explains specifically about immigration. The case discussed this time is a case of Abuse of Stay Permit imposed on a Ukrainian foreigner, and the person concerned has committed an immigration violation in the form of overstay for more than 60 days.

Based on the article, foreigners who are subject to overstay for 296 days will be deported and deterrence will be carried out by immigration authorities. Immigration officials are authorized to carry out these duties which are the powers given in Article 75 letters a and f of Law Number 6 of 2011.

The foreigner uses ITK when entering Indonesian territory, in terms of granting a residence permit which serves as a guide in licensing, namely Law number 6 of 2011 article 50 paragraph 1 and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia (PERMENKUMHAM) number 27 of 2014 article 3 paragraph 1 and 2 which also discusses the procedure for a visit stay permit, in paragraph 1 explains that a visit stay permit is said to be valid in accordance with the rules and legal basis if it is given to foreigners who enter Indonesian territory using a visit visa, and children of parents of ITK owners who recently born in Indonesia.

Looking at paragraph 2 of article 3 in the Permenkumham number 27 of 2014 there are additional subjects in granting residence permits for foreigners. The subject is contained in the element of paragraph 2 which reads; "(2) A visit stay permit granted to a foreigner as referred to in paragraph (1) may also be granted to:

Foreigners from countries who are exempted from the obligation to have a visa in accordance with the provisions of the legislation;

Foreigners who serve as crew members of transportation means that are docked or are in the territory of Indonesia in accordance with the provisions of the legislation;

Foreigners who enter Indonesia in an emergency; and

foreigners who enter the territory of Indonesia with a visit visa upon arrival.

The case that ensnared the Ukrainian foreigner Viktoriia Zolotarevych who entered the territory of Indonesia, precisely at the Immigration Checkpoint (TPI) Ngurah Rai

International Airport, was to use a Visit Visa Free (BVK) which could be allowed or accepted to enter Indonesian territory by immigration officers, in accordance with letter a contained in in paragraph 2 which has been explained. Ukrainian citizens can be granted a residence permit for a maximum of 30 days, in accordance with the applicable rules in Presidential Regulation Number 21 of 2016 concerning Free Visit Visa (BVK) as stated in article 4 paragraph 1.

The COVID-19 pandemic involving global problems, including Indonesia, has resulted in many new regulations emerging. This pandemic has also changed the systems and rules that apply in every country, and has a very significant impact on the new guidelines made by the government, especially on immigration agencies. The number of new regulations related to immigration causes its own losses for the subject of residence permit holders in Indonesia because of the lack of knowledge regarding the new policies made by the government in this case the Directorate General of Immigration. Regarding the handling of the COVID-19 pandemic, the government has made preventive efforts and a set of regulations to suppress the spread of COVID-19. Several regulations during the existence of the corona virus have been issued.

At the time the pandemic began, Permenkumham number 7 of 2020 had been issued and continued, developed, supplemented by other new regulations set by the Minister. With the system of closing access to certain countries throughout the world (lockdown), the government has set policies related to forced stay permits. Based on article 5 of the Minister of Law and Human Rights No. 8 of 2020, it regulates the Temporary Dismissal of BVK and VKSK as well as the provision of ITKT, where foreigners are suspected of being trapped by the lockdown rules because immigration rules cannot be fulfilled, they can be given a Forced Stay Permit (ITKT). Meanwhile, Article 2 regulates the temporary suspension of visa-free visits for foreigners who are the subject of Presidential Regulation Number 21 of 2016 concerning BVK.

Based on Article 4 Paragraphs 1 and 2, Permenkumham Number 11 of 2020, ITKT can be given automatically without submitting it to the immigration office if the Visit Stay Permit held by the foreigner in question expires and cannot be extended and the grant is free of charge. Meanwhile, in the adaptation of new habits (New Normal), the government also stipulates PERMENKUMHAM RI Number 26 of 2020 concerning Visas and Stay Permits during the adaptation period of new habits. Article 2 of this regulation states that "Foreigners holding valid and valid Visas and/or Stay Permits may enter Indonesian territory through certain TPIs after fulfilling the Health protocol". In this regulation the minister also temporarily stops the provision of BVK and VKSK until the pandemic ends which is stated in Article 3 paragraph 1. In Article 7 Paragraph 1 Permenkumham No. 6 of 2020 states that foreigners who were previously ITK holders and have obtained ITKT can apply for an extension of their residence permit to the immigration office based on their area of residence.

The existence of regulations related to residence permits during the COVID-19 pandemic will affect the cases to be discussed, namely regarding Ukrainian citizens who overstayed during the pandemic. The very striking difference in rules before and after the pandemic is a challenge for foreigners living in Indonesian territory.

Sample Case

Overstay includes violating a residence permit that exceeds the time period stated in the visa in a country. Overstay rules vary by country. For example, in Hong Kong, if someone is overstayed, they will be charged HK\$50,000 for Rp. 92,000,000 or imprisoned for at least 2 years.

In some European countries, the treatment and giving of fines and penalties is carried out with a heavier weight. For example, in Greece, if the residence permit is overstayed for more than 20 days, then two options are given accordingly in Hong Kong, namely: First, a fine of 700 Euros (around 11 million rupiahs) will be imposed; Second, no pay a fine but prohibit the person concerned from entering the Greek territory and the Schengen zone for 5 years. If someone's residence permit is running out, but you still want to enjoy your

vacation, you should immediately apply for an extension of the residence permit. For example, if a person visits a country that has a 30-day visitor visa, that person can add another 30 days of stay. So, the total person stays in the country is 60 days. The trick is to apply for a permit at least a week before the visa deadline. Meanwhile, if you are on vacation in America, you should immediately apply for an extension of your residence permit at least 6 months from the end of the residence permit.

Malino carelo loing, 72, was deported because his stay permit had exceeded seven months in Bali. After that, the man was sent back to his place of origin, namely the Netherlands. "MCL received a sentence in the form of detention at the Denpasar RUDENIM. Violators were against article 78 (3) of Law No. 6 of 2011 concerning Immigration, namely a violation of the 60-day time limit,". According to immigration system data, violators entered the Indonesian border area through Soetta Airport with a visit visa on 26-11-2018. MCL said that the person concerned went to Indonesia to visit his grandson, whose initials were Ye.

MCL met his nephew in Indonesia with problems with his family. The family in question lives in the Denpasar area. While in Bali the activities carried out were only in the form of sightseeing, and being with his nephew. Saroha said that during his stay in Bali, Loing depended on his retirement. However, as of February 2019, Loing was unable to pay the dues from the violation, MCL did not have access to contact immigration transfer, he directly visited KANIM to renew his residence permit but was unable to pay the fine he received. Finally, MCL made coordination through the Dutch consul in Bali, the person concerned left, followed by returning the ticket to the Netherlands. After being detained for about a month.

The legal basis for extending residence permits during the pandemic is contained in PERMENKUMAM Number 34 of 2021 concerning the Granting of Immigration Visas and Residence Permits in the Period of Handling the Spread of Corona Virus Disease 2019 and National Economic Recovery.

Article 6

(1) Foreigners holding a Stay Permit residing in the Indonesian Territory and unable to return to their country of origin may be granted a new Stay Permit after obtaining a Visa.

(2) The visa as referred to in paragraph (1) consists of:

- a. Visit visa; or
- b. Limited residence visa.

(3) The visa as referred to in paragraph (1) is submitted by the Guarantor to the Director General of Immigration electronically by fulfilling the requirements in accordance with the provisions of laws and regulations through the following mechanisms:

- a. submitting an application electronically in accordance with the provisions of the legislation; and
- b. Visa fee payment and Visa approval fee

Director General of Immigration in accordance with the provisions of the legislation in the field of state revenue non-tax applicable to the Ministry of Law and Human Rights.

Since the pandemic hit the world, especially Indonesia, the immigration agency has again received many problems related to overstay. The Immigration Technical Implementation Unit in the Bali area, namely the Immigration Office Class I TPI Denpasar, received a case related to overstay during this pandemic. The case involves a Ukrainian citizen named Viktoriia Zolotarevych, the perpetrator entered Indonesian territory through the Ngurah Rai International Airport TPI on February 25, 2020 using a Visit Visa Free (BVK). This Ukrainian citizen violated the immigration procedure, namely exceeding the limit of stay in Indonesian territory (Overstay). Violators are subject to articles in the Immigration Law 6 of 2011 article 78 paragraph 3, in which the Ukrainian citizen exceeds the limit of existence in Indonesia for more than 60 days.

From the data that has been taken at the Immigration Office Class I TPI Denpasar, in the Minutes of Examination after being examined by the violators' investigators, he

reasoned that the Ukrainian citizen realized that he had overstayed and realized that his Stay Permit was valid for one month. When he was going to apply for an extension in March 2020, the Ukrainian citizen reasoned that he could not extend because the country's borders were closed due to the corona virus pandemic and he also said that he was cheated by an agent who would take care of extending his visa.

Based on the Minutes of Examination that has taken place between the investigator and the violator of the immigration case who is a citizen of Ukrainian nationality, the chronology told to the BAP is that the person concerned should have taken a visa abroad and left Indonesia on March 25, 2020, but the person concerned unable to leave the territory of Indonesia due to the Covid 19 pandemic which resulted in the closing of state borders. Due to the non-opening of border access, the person concerned asked for help from an agent who would help arrange the visa for the Ukrainian citizen, and the person concerned claimed to have paid the agent for the smooth processing of the visa later. at the same time the agent asked for more compensation for taking care of all the administration of the overstayed Ukrainian citizen, and the Ukrainian citizen did not want to continue to deal with the agent because the fees were too expensive. Victoria admitted that she had been deceived by the fictitious agent who took her money, she also admitted that she had only been able to visit the immigration office after a 296-day overstay due to being exposed to the COVID-19 virus.

From the example of the case at the Imgasri Class I TPI Denpasar office, it can be said that overstay cases during the pandemic are very common and may even occur periodically due to the effects of a long pandemic. This could be due to overlapping government policies as well as very complex immigration-related regulations during this pandemic and the fragmentation of rules that made it difficult for foreigners in Indonesia to take care of immigration-related matters (Stoker 2018). Policy-making needs to be carried out by the government in this pandemic era, but immigration control of foreigners is not ruled out because of the complexity of rules and policies, resulting in foreigners who are in Indonesia and cannot return to their home countries to take the opportunity to commit acts of violation such as overstay committed by Ukrainian Citizen Victoria Zolotarevych.

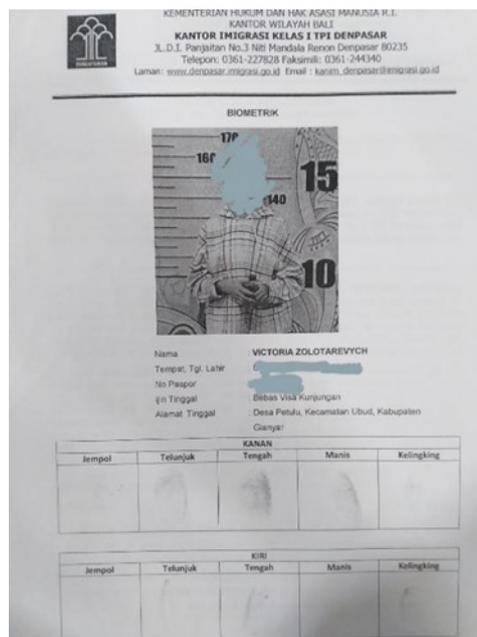


Figure 1
The Ukrainian Citizen Victoria Zolotarevych

CONCLUSION

Based on the explanation in the previous section, it can be concluded that the binding regulations regarding overstay are Law number 6 of 2011 and the newly issued regulations regarding residence permits. One of them is Permenkumham number 32 of 2021. From the

example of the case in the TPI Denpasar class I immigration office, it can be said that overstay cases during the pandemic are very natural and may even occur periodically due to the effects of a long pandemic. This could be due to overlapping government policies as well as very complex immigration-related regulations during this pandemic and the fragmentation of rules that made it difficult for foreigners in Indonesia to take care of immigration-related matters. In addition, to the legal rules that we have ourselves, there needs to be supporting regulations from other agencies regarding the handling of COVID-19. because this is a supporting factor in terms of policy makers regarding the handling of foreigners who exceed their residence permits or overstay policy making needs to be carried out by the government in this pandemic era but immigration control of foreigners is not ruled out due to the complexity of rules and policies, resulting in foreigners whose existence in Indonesia and unable to return to their country of origin take the opportunity to commit an act of violation.

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