

Judicial Review of Administrative Sanctions against the Foreigner According To Immigration Act In Indonesia



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ABSTRACT : The problems in this study regarding the Juridical Review of the Application of Administrative Sanctions for Foreigners according to Law Number 6 of 2011 concerning Immigration are: 1) How are Administrative Sanctions for Foreign Citizens Violating Immigration Regulations Based on Law Number 6 of 2011 concerning Immigration Examined from the Act State Administration, 2) What Weaknesses Are Regulated by Administrative Sanctions Law no. 6 of 2011 concerning Immigration, 3) How Ideally and Administrative Sanctions Should be regulated in Law 6 of 2011 concerning Immigration for Foreigners Who Violates Immigration Rules. The method used is descriptive analytical normative legal research. The results of the study indicate that the administrative sanctions for immigration are based on Article 75 paragraph (1) and paragraph (2) of Law Number 6 of 2011 concerning Immigration. Immigration Administrative Sanctions by immigration officials are based on objective considerations, and are based on administrative sanctions patterns in accordance with the study of state administrative law. However, the regulation of administrative sanctions against foreigners who commit immigration violations in Indonesia is still not maximized. This is because there are several weaknesses in Law Number 6 of 2011 concerning Immigration, especially regarding Immigration Administration sanctions, related to "adverse actions". A more in-depth analysis of Immigration Administrative Sanctions is needed to formulate the ideal administrative sanctions, one of which is the comparison method of Immigration Administrative Sanctions in Indonesia with Administrative Sanctions in other countries, as well as to formulate the ideal conditions of Immigration Administrative Sanctions.

KEYWORDS: Administrative Immigration Sanction, Violation of Foreigner.

INTRODUCTION

Associated with the rapid development of traffic flow and influence the demands of globalization that can not dammed the immigration problems need to change or revise the old law with reforms that can anticipate the likely impact of these developments. The demands of an increasingly global economy forward require all processes and procedures faster and shorter but still selective.(Sjahriful, 1993) To answer these challenges, need to device regulations interrelated synergized. The fact that so must be one of the considerations the issuance of Law No. 6 of 2011 on Immigration. With the issuance of the Act, the Act No. 9 of 1992 on Immigration and provisions related to it are no longer valid(Firmansyah, 2017).

Implementation of the monitoring carried out under the authority of the minister, as described in Article 66 of Law No. 6 of 2011 on Immigration. Foreigners do not comply with the legislation in force in Indonesia, can cause problems and may be subject to legal action in the form of Measures such investigations Criminal Law Immigration, The legal action in the form of state administrative immigration measures (Manan, 2000).

Based on the background described, the problems in this research are; How to administrative sanctions for foreigners who commit violations of the Immigration Regulations, according to Immigration Law No. 6 of 2011 Assessed from the State Administration Law? Any weakness Regulated Administrative Sanction Immigration Law No. 6 of 2011? How Administrative sanctions are ideal and should be regulated in Immigration Law No. 6 of 2011 for foreigners who violate the Immigration Regulations?

RESEARCH METHODS

In preparing the writing of this study, the approach to the problem that will be used is a normative juridical approach, the research used by examining the library materials or secondary data.(Roni Hanitjo Soemitro, 1982) Specifications in this research are descriptive. The meaning of descriptive is to describe the objects that are at issue, namely the judicial review application of administrative sanctions for foreigners under the Act No. 6 Year 2011 on Immigration and optimization of administrative sanction for foreigners under the Act No. 6 Year 2011 on Immigration in accordance with the theory of the State Administration Law and the real conditions in the field.

Judicial Review of Administrative Sanctions against the Foreigner According To Immigration Act In Indonesia

Data used in the writing of this study comes from secondary data. Secondary data is basically normative data sourced primarily on legislation. (Royce Singleton, 1988) The normative data is generally in the form of the provisions of the legislation that became the benchmark applied. This research using document study by collecting the legislation relating to immigration, documents, data and other literature that has to do with the research conducted, as well as with interviews with competent resource persons. (Mamudji, 2004) Data analysis technique used in the writing of this study is qualitative data analysis techniques. In preparing the writing of this study is four (4) chapters, namely the introduction, literature review, the results of research and discussion, and cover.

RESULTS AND DISCUSSION

Administrative Sanctions for Foreigners Violation of Immigration Rules

Immigration, conceived as administrative action in accordance with Article 1 (31) of Law No. 6 of 2011 on Immigration, immigration administrative action is an administrative sanction immigration officers assigned to the strangers outside court procedures. Immigration Action measures in the form of administrative better known by administrative action on immigration (Waluyo, 2011). Immigration Administrativ Measures imposed to any stranger in Indonesia that: Allegedly dangerous activity or suspected to be harmful to the security. (Philipus Hadjon, Paulus Effendie Lotulung, H.M. Laica, 2010) Do not obey the laws in force. Immigration officials authorized to give administrative sanctions against foreigners residing in Indonesia, where citizens have been doing dangerous activities, or suspected of endangering the security and public order, or does not respect or do not comply with the legislation in force. (Marbun, 1997)

Forms of administrative sanctions which can be applied to foreigners under Article 75 paragraph (2) of Law No. 6 of 2011 on Immigration, among others, are:

- a. Inclusion in the list of prevention or deterrence;
- b. Restriction, alteration or cancellation of stay permit;
- c. Prohibition to be in one or a few specific places in the region of Indonesia;
- d. Requirement to reside at a certain place in Indonesia Territory;
- e. The imposition of the burden of the cost; and / or
- f. Deportation from the Territory of Indonesia.

Administrative sanction According to Law No. 6 of 2011 Concerning Immigration Assessed In the State Administrative Law As explained by J.B.J.M. ten Berge, "sanctions are at the core of administrative law enforcement, sanctions are necessary to ensure enforcement of administrative law", the Administrative Sanctions contained in Law No. 6 of 2011 on Immigration at the core enforcement of administrative rules in the field of immigration to crack down on violations of certain immigration rules conducted by Indonesian citizen or foreign citizen, and as discussed in this paper will discuss about foreign citizens (Ukun, 2003).

Administrative sanctions in accordance Immigration Law No. 6 of 2011 on Immigration can be studied types are evaluated from the perspective of the State Administration Law, the discussion in this paper the authors use the opinion of Philip M. Hadjon (Philipus Hadjon, Paulus Effendie Lotulung, H.M. Laica, 2010) and can classify the types and kinds of Administrative Sanctions Immigration according to the State Administration Law, as follows:

- a. Inclusion into the Register prevention or deterrence
Sanctions inclusion in the Register prevention or deterrence can be classified as punitive sanctions because sanctions imposed against violators Alien immigration rules, particularly Article 75 paragraph 2, the sanction is a form of Bestuursdwang (government coercion) for violations of immigration rules committed by Foreigners.
- b. Restrictions, changes or cancellations Residence Permit
This sanction is classified as a sanction Regressive as a consequence of the actions that have been given Foreigners Residence Permit in Indonesia, but did not carry out obligations under the applicable rules, is a form of Bestuursdwang (government coercion).
- c. Prohibition to be in one or a few specific places in the Territory Indonesia
This sanction is more preventive visits from his goal to maintain stability and order in certain areas in the region of Indonesia, is a form of Bestuursdwang (government coercion).
- d. Housed must to stay at a certain place in Indonesia Region
Requirement to reside at a certain place in the Region Indonesia is Bestuursdwang (coercion of government) imposed to Strangers avoid wider consequences due to actions that break the rules. These sanctions can be preventive as well as repressive may provide penalties for violators of the rules Foreigners and prevent any action against the rule again, so that sanctions can be classified as a punitive sanction.
- e. Deportation from Indonesia Region
Bestuursdwang action (coercion of government) in the form of coercion to the Stranger to leave the territory of Indonesia because it was considered dangerous or reasonably suspected to disrupt peace, morals, or general welfare. It is included in punitive sanctions.
- f. Expenses Charges

Judicial Review of Administrative Sanctions against the Foreigner According To Immigration Act In Indonesia

The cost burden imposed on foreigners who stay exceeds a predetermined time limit, if the fee is not paid, the burden to Strangers may be subject to more severe sanctions. This is consistent with the nature of the Forced Money Imposing sanctions (Dwangsom).

The weakness of the administrative sanctions stipulated in Immigration Law No. 6 of 2011

Basic imposition of sanctions / measures Administrative process outlined in Article 5, paragraph 1 Emergency Law of the Republic of Indonesia Number 9 Year 1953 About Alien Control, which is then converted to the Article 42 of Law No. 9 of 1992 on Immigration, and updated on Article 75 paragraph 1 of Law No. 6 of 2011 Concerning Immigration always insist on "a dangerous activity and is suspected of endangering the security and public order or does not respect or do not obey the laws and regulations made by the Stranger", (Ridwan, 2017) while the language has a lot of interpretation, not measurable, even quite confusing to the size of an Article of Law State.

Other problems arise when the Stranger will apply/Administrative Measures Immigration. As stated in Law No. 6 of 2011, the form of administrative sanctions for foreigners consisted of: 1. the inclusion in the list of prevention or deterrence; 2. restrictions, change, or cancellation of stay permit; 3. The prohibition to be in one or a few specific places in the region of Indonesia; 4. The requirement to reside in a particular place in the region of Indonesia; 5. The imposition of the burden of the cost; and or 6. Deportation of Indonesian territory, it will arise the question "Foreigners who do what will be penalized / action with which?"

Basic obscurity Sanctions/Administrative Measures may impact on Immigration Foreigners who are subject to sanctions, they are the real victims. Strangers can fall victim to abuse of power or abuse of authority committed by immigration officers, while to be able to sue or file a complaint about the Administrative Sanction Decision, Stranger will have trouble.

Analysis of Article 83 and Article 119 of Law No. 6 of 2011 discovered overlapping sanctions for "Foreigners who enter and / or are in the Indonesian region that does not have a Travel Documents and Visa are legitimate and valid", as defined in Article 83 paragraph 1 for foreigners referred to may be subject to sanctions / measures Administrative Immigration form of having to reside at a certain place in the Indonesian region, in this case the placement in the immigration detention center, but in the criminal rules as described in Article 119 paragraph 1 for foreigners referred to may be subject to criminal sanctions in the form of imprisonment of five (5) years and a maximum fine of Rp 500,000,000.00 (five hundred million rupiah). It is certainly dangerous given a sanction that is in the Constitution must be regulated proportionately. Overlapping rules of administrative sanctions to criminal sanctions resulted Immigration Officer acts as an organ of government, when enforcing sanctions / measures Administrative Immigration will experience confusion.

Analyzing Sanctions/administrative actions as stipulated in Article 75 paragraph 2 of Law No. 6 of 2011 on Immigration, and given the development trend of violations committed stranger, the authors assume that the sanctions / measures Administrative Immigration can not accommodate the provision of appropriate sanctions and provide Foreigner's deterrent effect for offenders in Indonesia. Though the type of administrative sanctions/penalties should be a government-imposed potentially frightening and therefore is avoided by Foreign due to the imposition of these sanctions will mean a step to a more severe administrative sanctions are criminal sanctions.

Ideal Administrative Sanctions and must be regulated in the Immigration Law

Administrative Immigration Measures / Sanction in Indonesia compared to the Administrative Sanctions / Measures Immigration in other countries. To be able to know the ideal formulation of administrative sanctions and the right run by the Board of Immigration Indonesia, need to know about the immigration system and administrative sanctions imposed in other countries.

The Malaysian government is still using the Immigration Act No. 155 1959-1963, in terms of setting administrative sanctions against foreign immigration, immigration law Malaysia regulate matters of administrative sanctions immigration, one of which is as follows:

32. Removal of illegal immigrants.

Any person who is convicted of an offense under sections 5, 6, 8 or 9 shall be liable to be removed from Malaysia by order of the Director General:

Provided that no citizen convicted of an offense under section 5 shall be ordered to be removed from Malaysia under this subsection.

Immigration law in Malaysia clearly outlines the administrative sanctions to be imposed against foreigners who commit certain violations, coupled with the rules of criminal sanctions will be imposed if a stranger who was sentenced to administrative sanctions against or not to implement the decision of the administrative sanctions.

Singapore government strives to maintain a balance in the multicultural country, while maintaining the security and sovereignty of the country. Singapore is currently the Law Immigration/Immigration Act Chapter 133 edition of 2008, by including administrative sanctions, one of them as follows:

Removal of prohibited immigrants from Singapore

31. (1) If during the examination of any person arriving in Singapore or after such inquiry as may be Necessary that person is found to be a prohibited immigrant, the Controller shall, subject to the provisions of the regulations, prohibit him from

Judicial Review of Administrative Sanctions against the Foreigner According To Immigration Act In Indonesia

disembarking or may, in his discretion, detain him at an immigration depot or other place designated by the Controller.
(2) The person shall be liable to be removed from Singapore to his place of embarkation or to the country of his birth or citizenship or to any other port or place designated by the Controller.

(3) For the purposes of this Part, any reference to a person who has arrived in Singapore includes a reference to a person who has arrived but has not yet entered Singapore.

Singapore immigration law states clearly what actions can be considered to violate administrative rules and may be subject to administrative sanctions. In the system of the Singapore Immigration law firm set of administrative sanctions and caused a chain effect can be advanced to administrative sanctions or even criminal sanctions, so that sanctions can provide a deterrent effect. Singapore Immigration Act also set out clear authority possessed by an Immigration Officer to be able to freely enforce immigration rules, but still professional.

After discussing and outlining the elements contained in the Immigration Act of Malaysia and Singapore, which have proven effective are run in the country, the authors argue that sanctions/measures Administrative Immigration ideal for poured in legislation must meet several requirements, among other:

1. The sanctions/measures administratif immigration must be accompanied by a clear action basis, to conduct what may be penalized;
2. The form of sanction / administrative measures imposed must be clear;
3. Penalties/administrative measures which can be implemented not threatened with criminal penalties or other sanctions Administrative heavier;
4. Do not overlap with criminal sanctions or other rules;
5. Given a means of defense against foreigners being penalized / administrative action;
6. Given the clear authority of the officers authorized to carry out sanctions/administrative measures.

CONCLUSIONS

A. Conclusions

Based on the analysis and discussion, it can be concluded as follows:

Administrative sanctions as stipulated in Law No. 6 of 2011 on Immigration based on the theory advanced by JBJM ten Berge, namely, "sanctions are at the core of administrative law enforcement. Sanctions are necessary to ensure enforcement of administrative law ". While the types and kinds of administrative sanctions stipulated in Article 75 paragraph 2, Article 78, and Article 83 of Immigration Law No. 6 of 2011 to hold opinions from Philip M. Hadjon the form Bestuursdwang (government coercion), the withdrawal of the decision (provision) benefit, the imposition of administrative fines, and the imposition of money forced by the government (dwangsom).

Weakness Administrative Sanctions stipulated in Law No. 6 of 2011 on Immigration.

- a. Basic Imposition of Sanctions/Immigration Administrative Measures to Strangers as described in Article 75 paragraph 1 of Law No. 6 of 2011 is still unclear.
- b. Sanctions/Administrative Measures Immigration as stipulated in Law No. 6 of 2011 overlap with sanctions Pidana.Hal can potentially cause misinterpretation for executive officers.
- c. Sanctions/Administrative Measures Immigration as stipulated in Law No. 6 of 2011 Number 6 of 2011 are still not able to accommodate sanctions for violations of Immigration is increasingly complex. This can be exploited by foreigners to commit offenses because they think immigration laws do not provide a deterrent effect.

Analysis of sanctions/measures Administrative Immigration in depth is required in order to formulate an ideal administrative sanction, one way is to to formulate the terms of sanctions/measures Administrative ideal Immigration, among other things:

- a. Sanctions/administrative measures on immigration must be accompanied by a clear basic act, to act what can be penalized;
- b. The form of sanction/administrative measures imposed must be clear;
- c. Penalties/administrative measures which can be implemented not threatened with criminal penalties or other sanctions Administrative heavier;
- d. Do not overlap with criminal sanctions or other rules;
- e. Given a means of defense against foreigners being penalized/ administrative action;
- f. Given the clear authority of the officers authorized to carry out sanctions/ administrative measures.

To be able to realize the application of sanctions / measures administrative immigration ideal and precise with no decrease or increase the content contained in Law No. 6 of 2011 on Immigration, the Immigration line is deemed necessary to specifically prepare derivative rule of law in the form of Regulation Minister, by formulating the terms of sanctions / measures Administrative Immigration ideal.

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