

## **The Immigration Control of Foreign Citizens Applying for Stay Permit in The Indonesian Territory Based on Act Number 6 of 2011 Concerning Immigration (Case Study at Class I Immigration Office TPI Jember)**

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### **Abstract:**

The Law on Immigration is a guideline for coordinating every human being to create an orderly and conducive activity for foreigners living in Indonesia. Even though the formation of a regulation of Law Number 6 of 2011 concerning Immigration in an effort to control foreign nationals. It is undeniable to see that the implementation of existing regulations against foreigners is still not working effectively, with the increasing number of confirmed cases of foreigners who abuse their residence permits. So, there are questions about the application being carried out as it should. The focus of the problems studied are: 1. How is Immigration control of foreign nationals applying for a residence permit in Indonesian territory based on Law Number 6 of 2011 at the TPI Jember Immigration Class I office? 2. What are the obstacles and immigration efforts in applying for a residence permit bagi Foreign Citizens in the working area of the Class I Immigration office TPI Jember? 3. What are the immigration measures for foreign nationals who do not apply for a residence permit and overstay in the work area of the TPI Jember Immigration Class I office? The research that has been used by researchers is using a qualitative empirical juridical approach, which is how the researcher describes it at the time of research. The researcher also seeks to thoroughly examine the substance of the regulations regarding immigration control of foreign nationals who apply for a residence permit and those who violate a residence permit. The location of the research was carried out at the TPI Jember Class I Immigration Office. In determining the information also uses purposive. Data collection techniques carried out by researchers are using interviews, observation, and documentation. Followed by data analysis using triangulation of sources and techniques performed. The research results obtained by researchers, immigration supervision of foreign nationals, which includes entry and exit of foreigners who apply for residence permits in Indonesian territory, then monitoring every activity carried out by foreigners while in Indonesian territory. If the immigration official finds a foreigner carrying out suspicious or

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suspect activities, as well as a foreigner who abuses his residence permit in Article 78 of Law Number 6 of 2011 concerning Immigration, he will be subject to administrative action and may also be subject to sanctions in the form of deportation and detention.

**Keywords:** Supervision, Foreign Citizens), Misuse of Stay Permits, Applying for Stay Permits

## 1. Introduction

Based on Law Number 6 of 2011 concerning Immigration "Immigration is a matter of traffic science of people entering or leaving the territory of Indonesia and its supervision in the context of upholding state sovereignty"[1]. Immigration is a series of activities in the provision of services and law enforcement as well as securing the entry and exit of every foreigner from or into the territory of Indonesia, as well as supervision of foreign nationals whose presence is in the territory of the Republic of Indonesia.[2].

Supervision of foreigners in Indonesia, namely the entry and exit of foreigners in Indonesian territory and the presence and activities of foreigners in Indonesian territory. Supervision of foreigners who will enter Indonesian territory is carried out from the start of registration to obtain a visa at representatives of the Republic of Indonesia abroad, and then upon arrival at the port of the Immigration Checkpoint or what is commonly abbreviated as TPI. From the agency that will decide to refuse or grant entry permits into Indonesian territory, after the foreigner is given entry permits according to the visa granted, the supervision moves to the Immigration office whose working area covers the foreigner's residence.[3]

Immigration control as explained in Law Number 6 of 2011 concerning Immigration chapter VI article 66 paragraph (1) the minister carries out immigration control. Paragraph (2) immigration control namely: [4]

- a. Supervision of Foreign Citizens (WNA) in Indonesian territory who apply for travel documents, who leave or enter Indonesian territory and who are outside Indonesian territory.
- b. Supervision in the traffic of foreigners coming in and out of the territory of Indonesia and supervision of foreign nationals in every presence or activity carried out in the territory of Indonesia.

An immigration control system that can be carried out by immigration inspectors who have authority over foreign nationals who are in Indonesian territory which includes activities namely carrying out and checking the presence of foreign nationals in Indonesian territory, checking must be in accordance with what activities have been carried out by foreign nationals with what has been permitted by the immigration authorities, as well as checks on foreign nationals regarding the completeness of travel documents and immigration stay permits owned by the foreigner concerned [5].

Immigration control of foreigners can also be carried out when foreign nationals apply for visa, enter or leave the territory of Indonesia, and grant residence permits to foreign nationals. Where the supervision provisions based on the immigration law are carried out by: [6]

- a. Collection, processing, and presentation of existing data and information.
- b. Compilation of a list of names of foreign nationals who are subject to deterrence or prevention.
- c. Supervision of the presence and activities of foreigners in Indonesian territory.
- d. Taking photos and fingerprints, and
- e. Other activities that can be legally justified.

Immigration violations or crimes can be caused by immigrants such as foreign nationals who are in Indonesian territory. How to respond to this, for violations that have been committed by foreign nationals will be given strict action by the immigration apparatus which has the task of supervising foreign nationals. Immigration measures imposed can be in the form of deportation as one of the special and typical actions of the immigration function as has been stated in the Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration, actions for irregularities and violations in immigration provisions can also be imposed through actions immigration or can also go through the process in the court concerned. Based on the existing provisions of the immigration apparatus,[7] Based on existing provisions, the existence of immigration regulations is a very important attribute in upholding the legal sovereignty of a country within the territory of the country concerned, and every foreigner who enters a country will be subject to the laws of that country as citizens of the country itself [8].

Foreign nationals who live in Indonesian territory and have an immigration permit, can only stay in the area for the period specified in the immigration stay permit. If a foreign national exceeds the limit determined by the immigration agency or exceeds the limit of approximately 60 days from the specified stay permit, then the foreign national who exceeds the limit will be subject to sanctions, namely in the form of deportation and deterrence, all of which are regulated in the Law on Immigration. The presence of foreign nationals who are in Indonesian territory and exceed the time limit or what is commonly referred to in the immigration field as an overstay, everything related to a residence permit has been regulated in Law Number 6 of 2011 concerning Immigration.[9] The limited stay permit is only given to foreign nationals who enter Indonesian territory with a limited stay visa. Supervision of foreign nationals is not only carried out when they enter Indonesian territory, but while they are in Indonesian territory, including the activities carried out.

Immigration supervision also includes enforcement of immigration law, both administrative and criminal acts of immigration: Immigration Office Class I TPI Jember is one of the agencies authorized to carry out supervision and law enforcement for foreign nationals. Class I Immigration Office TPI Jember which has a fairly wide working area. Covering 4 (four) Regencies in East Java Province, including Bondowoso, Situbondo, Jember and Banyuwangi Regencies. In the work area, immigration violations are often found committed by foreign nationals [10].

In the work area of the Immigration Office Class I TPI Jember there are several violations that are violated by Foreign Citizens (WNA), namely in Law Number 6 of 2011 concerning Immigration in article 7 paragraph (1) which reads "Immigration Officials have the authority to carry out Immigration administrative actions against Foreigners who are in the scope of Indonesian territory who carry out dangerous activities and are reasonably suspected of endangering security and public order or not respecting and disobeying existing laws and regulations". And immigration administrative actions as described in paragraph (1) previously, namely in the form of [11]:

- a. Inclusion in the list of prevention or deterrence.
- b. Restrictions, changes and cancellations of residence permits.
- c. Prohibition to go to one or several in the territory of Indonesia.
- d. The obligation to reside in a certain place in the territory of Indonesia.
- e. Imposition of expenses, and
- f. Indonesian territory deportation.

The work area of the Immigration Office Class I TPI Jember has several violations that have been violated by Foreign Citizens (WNA), including violations that exceed the time limit set by foreigners who live in the work area of the Immigration Office Class I TPI Jember. Every year, the TPI Jember

Immigration Office Class I receives reports of irregularities in residence permits with deportation. As well as there are several foreign nationals who received action against deportation and deterrence, reports that have entered the territory of the Jember Immigration office [12]. Deportation is an act of forcibly expelling foreign nationals from Indonesian territory, while deterrence is an act of preventing foreign nationals from entering Indonesian territory. Deportation is carried out if the foreign national has expired and is still in Indonesian territory, as Article 78 of the Immigration Law has explained.

The formulation of the problem in this study is as follows:

1. How is Immigration supervision of Foreign Citizens who apply for a residence permit in Indonesian territory based on Law Number 6 of 2011 at the Immigration Class I TPI Jember office?
2. What are the obstacles and immigration efforts in applying for a residence permit for foreign nationals in the work area of the Immigration Class I TPI Jember office?
3. What are the immigration measures for foreign nationals who do not apply for a residence permit and overstay in the work area of the TPI Jember Immigration Class I office?

## **2. Materials and Methods**

The research that has been used by researchers is using a qualitative empirical juridical approach, which is how the researcher describes it at the time of research. The researcher also seeks to thoroughly examine the substance of the regulations regarding immigration control of foreign nationals who apply for a residence permit and those who violate a residence permit.

## **3. Results and Discussion**

### **3.1 Immigration Supervision of Foreign Nationals Applying for a Stay Permit in Indonesian Territory Based on Law Number 6 of 2011 at the Immigration Office Class I TPI Jember**

The Immigration Office has authority in each of its working areas, especially in the work area of the Class I Immigration Office TPI Jember. The Immigration Office in Jember Regency has a very important role in oversight, especially in the inspection section in the field and immigration, in the field of immigration, which consists of an oversight team and on the immigration side, there are officials who handle intelligence and Immigration enforcement. In immigration there is authority that has been previously regulated in the regulation of the minister of justice and human rights (HAM) Number 19 of 2018 regarding how to organize and how the process is carried out by the immigration party under supervision.

One of the main points of immigration activities is immigration control as stated in articles 38,39,40 and 41 of Law Number 6 of 2011 concerning Immigration. Immigration control is carried out on two citizens who are none other than Indonesian citizens and foreigners, namely:[13]

- a. Granting of permits, to Indonesian citizens themselves and foreigners;
- b. Exit and entry of Indonesian territory, both from Indonesian citizens and foreigners;
- c. The presence of foreigners in Indonesian territory;
- d. As well as activities carried out by foreigners in Indonesian territory.

The existence of several foreigners who are in a country will be the responsibility of the country where the foreigner is staying, while the country of origin of the foreigner also has the responsibility to protect its citizens who are in another country. The country where the foreigner is located, in addition

to having the obligation to guarantee his interests and security, is also obliged to supervise foreigners who are within the scope of his country's territory.

Immigration control has several mechanisms in terms of supervision. Starting from the previous arrival of foreigners until the foreigner is in Indonesian territory. TPI Jember Class I Immigration office supervises foreigners whose presence is within the scope of Jember Immigration work. The oversight mechanism can involve several agencies such as the ministry of finance through the Directorate General of Customs and Excise, the ministry of manpower, the Indonesian National Police, and the Indonesian National Armed Forces along with the previously formed immigration agency, namely TIMPORA or the Foreigner Monitoring Team. And it can be said that the involvement of government agencies is quite effective because it can prevent or minimize foreigners who violate existing laws and regulations and facilitate the subsequent supervision process. The immigration control mechanism consists of two things, namely:[ 14]

a. Administrative Oversight

Administrative supervision can carry out checks and research on other document travel documents, check blacklists, take photographs, take fingerprints and manage immigration data on foreigners and Indonesian citizens themselves.

Administrative supervision is an introduction to a series of immigration control activities, namely with several stages, including checking and researching foreign documents manually and then matching them with the existing information system database in the Immigration Office Class I TPI Jember. Administrative supervision is carried out through visa services at the local airport and seaport, starting with checking the completeness, legitimacy and verification of application documents. Then supervision can also be in the form of interviews with applicants or foreigners in this case to find out the eligibility of the application to be granted a visa, and carry out a list of prevention and deterrence.

b. Field Supervision

Field supervision is intended to obtain information that can be obtained through things that are directly related to the target of supervision. This supervision can be carried out directly in the field or at the location of foreigners involved in violations accompanied by an assignment letter from the Directorate of Immigration Office Class I TPI Jember. Field supervision can be carried out after receiving an immigration violation report through the local community or other agencies. In addition, this can also be done after checking the immigration documents for the foreigners concerned. In order to facilitate the next process that will be carried out by immigration officials to take action if there has been a violation of foreigners in the work area of the Immigration Office Class I TPI Jember.

In the case of supervising the presence of foreigners in the Jember immigration work area who violate or do not violate the applicable laws and regulations, these activities are carried out to obtain information and materials used in making decisions and establishing immigration policies. Supervision can be carried out by conducting open supervision or closed supervision.

Open and closed surveillance is carried out when the Class I Immigration Office of TPI Jember receives a report regarding the presence of foreigners who have been suspected of committing immigration violations. Monitoring methods include:[ 15]

1) Open surveillance

Open surveillance is supervision carried out by the TPI Jember Class I Immigration Office by investigating foreigners who are suspected of committing immigration violations. Foreigners will be visited by the immigration control party to examine the documents needed in the process. What he did was because the immigration authorities received reports from local residents and reports from related agencies. The agency concerned includes the Foreigners Monitoring Team (TIMPORA).

## 2) Closed surveillance

Covert supervision, namely supervision carried out secretly without the knowledge of foreigners who are suspected of having committed violations. This is done frequently to obtain more accurate information through the intelligence team of the Class I Immigration Office TPI Jember. In order to avoid leakage of information to outsiders, immigration control uses a secret monitoring method that takes place. The secrecy of this immigration control activity also applies only to the immigration control party concerned, therefore only a few people or officials know about this closed surveillance activity.

This is done by the TPI Jember Class I Immigration Office by forming a special team which will be dispatched to locations or fields where there are foreigners who commit immigration violations without involving other agencies. This closed supervision is carried out when open supervision does not produce satisfactory results regarding the leakage of information provided and results in foreign nationals being able to escape immigration control.

Quoted from a very relevant theoretical opinion in this regard which has been explained by Jazim Hamidi and Charles Christian explained: "The Foreigner Monitoring Team carries out the Immigration function in terms of immigration control. Implementation of supervision in terms of the traffic of foreigners entering and leaving the territory of the Republic of Indonesia as well as the activities of foreigners during their presence in the territory of Indonesia." [16] It can be explained from the opinion above as follows, namely, immigration control has a very important role for monitoring foreign nationals who enter or leave the territory of the Republic of Indonesia, as well as monitoring every activity carried out by foreigners while in the territory of Indonesia.

### **3.2 Immigration Constraints and Efforts in Applying for a Stay Permit for Foreign Citizens in the Work Area of Class I Immigration Office TPI Jember**

Oversight carried out on foreign nationals in terms of applying for a residence permit has several obstacles or inhibiting factors encountered in applying for the residence permit from immigration officials and foreigners themselves. Constraints that are owned by the Class I Immigration Office TPI Jember, namely having constraints, namely distance, [17] because the Immigration Office not only oversees foreigners who are in the Jember area but four districts that are under the supervision of the Immigration Office Class I TPI Jember which must be supervised by immigration inspectors namely Bondowoso district, Situbondo regency, Jember itself, and Banyuwangi district. Efforts made by the TPI Jember Class I Immigration Office include office services such as social media which are made for information containers that foreigners and Indonesian citizens themselves will definitely need, information that enters the public domain is usually within the scope of social media such as Facebook, Instagram, email, and so on provided by the TPI Jember Class I Immigration Office.

Constraints from foreigners themselves due to lack of awareness for foreigners holding permits to stay when the deadline has been determined by immigration officials, [18] So this is where foreigners often don't report residence permit documents, which often leads to misuse of visit permits for work, failure to take care of immigration, such as extending the deadline for stay permits because each residence permit has a certain time according to the provisions of the immigration office, as well as other administrative violations. Often this kind of practice is a violation in terms of lack of self-awareness from the guarantor and the foreigner himself, because the guarantor has full responsibility for the presence and activities of the foreigner during his existence in the territory of the Republic of

Indonesia, not only that the guarantor can also put more emphasis against foreigners holding residence permits.

### **3.3 Immigration Actions Against Foreign Citizens Who Do Not Apply for Stay and Overstay Permits in the Work Area of Class I Immigration Office TPI Jember**

Immigration Administrative Actions are administrative sanctions that have been determined by immigration officials against foreigners or foreign nationals outside of the judicial process. However, if an immigration action is imposed because it has been considered or violates existing statutory provisions, then in each form the decision on immigration action must be accompanied by clear reasons. The nature of immigration control is that it can cover immigration law enforcement, both administrative and immigration crimes. Immigration actions will be carried out if a foreign citizen (WNA) violates a residence permit in the territory of the Republic of Indonesia within the scope of work of the TPI Jember Immigration Class I office. This is what will become the authority of TPI Jember Class I Immigration Officers in taking action against foreigners who have committed or violated immigration administrative actions. Class I Immigration Office TPI Jember handles foreign nationals who have violated an existing regulation.

Immigration enforcement is an action carried out by the immigration office through the subsection of immigration enforcement to carry out the duties of investigation and prosecution, prevention and deterrence, temporary shelter and care of foreigners. The violation of foreign nationals is contained in Law Number 6 of 2011 concerning Immigration Article 75 paragraph (1) immigration officials have the authority to carry out immigration administrative actions against foreigners who are in Indonesian territory who carry out suspicious things such as activities that are dangerous and should endanger security and public order or do not respect or disobey the existing regulations in the laws and regulations.

Based on the results of observations that the researchers obtained with the Head of Enforcement Sub-Division, that there were several violations of residence permits, namely: misuse of residence permits, exceeding the time limit for residence permits (overstaying), and not having a residence permit (illegal stay). If you speak beyond the time limit for a residence permit (overstay), you can speak in accordance with Article 78 of Law Number 6 of 2011 concerning Immigration. Article that specifically regulates violations of foreign nationals who exceed the specified period of residence permit or overstay.

Described in article 78 of Law Number 6 of 2011 Concerning Immigration, namely: a foreigner holding a residence permit if the validity period has expired and the foreigner is still in the territory of the Republic of Indonesia, then within a period of less than 60 (sixty) days from the deadline During the time of residence permit, a fee will be charged according to the provisions in the legislation. And then the foreigner who cannot pay the fees or fines that the foreigner violates will be subject to immigration administrative sanctions in the form of deportation and deterrence of the foreigner.[19]

Enforcement is an action taken by the Class I Immigration Office of TPI Jember to take action against foreign nationals (foreigners) who commit violations or violate existing rules for foreigners. Actions that can be taken are by imposing fines, detention, deportation, and bans. Fines also apply to foreigners who overstay or exceed the time limit set by the immigration authorities when they set foot in Indonesia. For fines for foreigners who have violated this subject, a fine of Rp. 1,000,000 (one million

rupiah) is calculated every day. And if a foreigner who is in the work area of the Jember Immigration Office exceeds the specified stay permit period for 30 (thirty) days, the fine he will be charged is equivalent to Rp. 30,000. 000 (thirty million rupiah) calculated from the first day of exceeding the specified time limit. If the foreigner cannot pay the specified fine then one of the immigration actions can be followed up by detaining the foreigner And then Immigration Class I TPI Jember will report to the Directorate General of Immigration who can later convey this matter to the embassy of the country of origin of the foreigner concerned regarding the settlement of weighted fines. After that, the TPI Jember Class I Immigration Office will carry out the next stage, namely by deportation by forcing foreigners who have committed violations to return to their country of origin.[20] There are several things concerning the process of prosecution carried out by the TPI Jember Immigration Office against foreigners who have committed violations in the work area of the Jember Immigration Office, including:

a. Detention of Foreign Citizens (WNA)

Detention is carried out if the foreigner cannot pay the fine that has been imposed. Detention can be explained by detention, namely by placing foreigners in a special place which can be called an immigration detention house. This detention will continue until the foreigner can pay the fine specified in the fine to be paid. Class I Immigration Office TPI Jember will continue to communicate with the embassy of the country of origin of the foreign citizen who has committed a violation through the Directorate General of Immigration to coordinate the process of settling fines or being able to be returned to the country of origin (deportation).

b. Deportation of Foreign Citizens (WNA)

Deportation can also be carried out against foreigners who have committed violations in the work area of the Class I Immigration Office TPI Jember. Deportation is the forced return of foreign nationals to their country of origin. Deportation can be carried out by escorting or monitoring the foreigner to the international airport of their country of origin and supervised until the foreigner arrives or arrives in their country of origin. TPI Jember Class I Immigration office officials also coordinate with airlines to participate in supervising the departure of these foreign nationals and upon arrival to their country of origin.

c. Ban on Foreign Citizens (WNA)

It can also be followed up by means of the Class I Immigration Office TPI Jember can also ban foreign nationals who have committed violations, namely not being allowed to re-enter Indonesian territory until a predetermined time limit. This is also an action taken by the TPI Jember Class I Immigration Office against people who have violated existing regulations, and have harmed or violated existing provisions in Indonesian legislation.

#### 4. Conclusion

The Alien Monitoring Team (TIMPORA) in the immigration control of foreign nationals who apply for a residence permit in Indonesian territory is there, supervises foreigners who want to leave or enter Indonesian territory, and monitors all activities that foreigners carry out while in Indonesian territory. There are several supervisions against Foreign Nationals, including administrative supervision and field supervision. There are several obstacles that have been overcome by the TPI Jember Class I Immigration office, but the Immigration office has a solution to these problems. There is one obstacle to foreigners, namely, paying little attention to the expiration date of the residence permit that has been granted, and the immigration has a solution for this, namely to emphasize information on foreigners and guarantors of these foreigners. Immigration actions against foreign nationals who violate the residence permit or who exceed the specified time limit (overstay) have been explained in Law Number



6 of 2011 concerning Immigration in article 78, if a foreigner holds a residence permit who exceeds the specified time limit those who are less than 60 days will be subject to administrative burdens, and if a foreigner holding a residence permit has exceeded 60 days an action will automatically be taken, namely deportation and detention.

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