

Justice Value for Society on Implementation of Visa and Stay Permit Policy in the New Normal

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ABSTRACT

The situation caused by the Covid-19 pandemic forces every government of sovereign countries to close their borders; this results in the limited movement for anyone to travel across countries. As one of the countries affected by Covid-19, the Indonesian government issued a visa and stay permit policy in the new normal era, which applies to every foreigner entering and residing in Indonesian territory. It is presumed that there are many differences in the implementation of visa and residence permit policies during the new normal at the level of policy spending and its application in society or law in action. This qualitative research uses a socio-legal approach to explore what kind of justice the society will get from exercising a particular immigration policy during the pandemic. Therefore, in implementing the visa and stay permit policy in the new normal situation, the consideration must cover not only the country's benefits but also the ability to fulfill a sense of justice for society. In this case, arrangements for foreign workers should be limited in number, and job markets opportunities are prioritized for Indonesian citizens instead of foreign workers.

Keywords: Society Justice Value, Visa and Stay Permit Policy, Law in the New Normal Life.

1. INTRODUCTION

The Covid-19 pandemic started in Wuhan, China, which spread throughout the world by early 2020. Governments in several countries have responded to this situation by closing borders and resulting in limited movement of people worldwide. As one of the affected countries by this pandemic, the Indonesian government issued some policies regarding borders for foreigners. The very first was Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2020 concerning Temporary Cessation of Exemption Visa, Visas, and Granting of Forced Stay Permits for Citizens of the People's Republic of China, then followed through by several regulations until today.

Along with the ongoing control process by the government to cut the spread of the Covid-19 virus and handling positive patient cases in the society, the government eventually responded to this situation through what is called "the new normal era." The era itself has many new regulations, including to allow

permits for certain foreigners to enter the territory of the Republic of Indonesia on a limited basis of entry and stay permit with a mechanism regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 26 of 2020 concerning Visas and Stay Permits in the New Normal. Changes in immigration policy during emergencies and urgent situations are an effort made by the Directorate General of Immigration as an integral part of government policy in handling Covid-19, especially in an effort to maintain and increase national economic growth affected by the pandemic.

However, in order to implement the policies that have been made, it must also be seen from the side of the society as objects of the government policy. Thus, it is important to study what justice is at play in society's favor by issuing an emergency immigration policy during the pandemic. Therefore, implementing visa and residence permit policies during the new normal at the level of policy spending and its application in society, or law in action, of course, there will be many differences.

2. RESEARCH METHOD

This research is conducted by a juridical-empirical method which analyzes both primary and secondary data. The primary data is observation in Jepara Regional Government, and the secondary data is from the Regulations of Ministry of Law and Human Rights concerning visa and stay permit policy for foreigners in the new normal. In contrast, the secondary data consists of literature, journals, and dictionaries related to the problems in this research. Thus, this research does not only compile the materials such as theories, concepts, principles, and regulations of law dealing with the topic but also explains the reality of the law in society as a law phenomenon for the subject, that is foreigners who apply for a visa and stay permit in Indonesia and local government and community around the foreign companies in Jepara. All data obtained are observations of the Jepara District Foreign Surveillance Team Meeting (Timpora Kabupaten Jepara), Central Java, and a literature review. The data, then, are analyzed qualitatively by a socio-legal analysis. Regulations are dissected to find the sociological meaning so that the value of justice for society can be revealed.

3. FINDINGS AND DISCUSSION

3.1 *Justice Value in John Rawls and Gustav Radbruch Perspective*

According to John Rawls's theory of justice, there are two principles of justice [1]. The first principle is constituted freedom. This principle states that every individual is entitled to the right to the most freedom, as much as everybody else, given that his freedom does not violate others. This principle distinguishes aspects in a social system that defines and guarantees citizens' freedom from aspects that define and clarify socio-economic inequalities. This freedom has to be equal because a member of society is entitled to equal rights.

The second principle is constituted social and economic equalities that are regulated in a way that is beneficial for everybody, in which every position and level of society is open to everyone. Social and economic inequalities must be helpful to the whole society, and the elites who have authority must be open to everyone. In short, social and economic inequalities are considered non-existent unless they are beneficial for societies. In addition, income and wealth distribution and organization are based on inequality in authority and responsibility or chain of command. Furthermore, as wealth and income distribution are not necessarily equal, the society

applies the second principle by making its positions open and available to everyone so that compliance to this principle will lead to social and economic inequalities that are beneficial to everybody. According to Rawls's theory, everybody has equal rights to equal wealth. The second principle in Rawls's theory of justice will be used in this paper to examine the regulation on visa and stay permits for foreigners in Indonesia during the pandemic of Covid-19.

The existence of arrangements to create mutually beneficial justice makes the value of justice a material that becomes the content of the rule of law. Gustav Radbruch reaffirmed the value of justice as the crown of every law and order. Justice has a normative and constitutive character for law through a moral basis and benchmarks for a positive legal system and affirmation of the existence of justice as an absolute element in law because a regulation deserves to be called law if it has a value of justice inside it [2].

Radbruch emphasizes three main aspects that make the ideal framework of law [3]. First, the aspect of justice, which refers to equal rights before the law. Second, the aspect of finality, which refers to the goal of justice, namely advancing the good in human life. Third, the aspect of certainty, which contains guarantees that the law contains justice and norms that promote goodness, therefore the law functions as a rule that is obeyed. Five Regulations of the Minister of Law and Human Rights of the Republic of Indonesia were issued to accommodate entry permits and stay permits during the new normal period for foreigners in Indonesia [4]. Rawls's principle of justice and aspects of Radbruch's ideal legal framework which will be used to dissect the value of justice for society in regulations regarding visas and stay permit for foreigners in Indonesia during the Covid-19 pandemic

3.2 Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2020 concerning Temporary Cessation of Exemption Visa, Visas, and Granting of Forced Stay Permits for Citizens of the People's Republic of China. Issued on February 24, 2020.

This regulation is effective after an inter-ministry coordination entry meeting on preventing the spread of the new virus from the People's Republic of China. The meeting discussed data and facts regarding the Coronavirus that has plagued and spread rapidly and spread throughout the world through the WHO decision to establish Coronavirus from the People's Republic of China as a disease

with the status of a public health emergency of international concern (PHEIC) on January 30, 2020. The determination of the PHEIC status impacts most countries worldwide who decide to close their points of entrance, both seaports, airports, and land borders.

The government decided to terminate the issuance of exemption visas and regular visas to both People's Republic of China citizens and all foreigners traveling to and from the People's Republic of China territory within the previous fourteen days prior to the visa application date. This regulation also applied to ITAS (temporary stay permit) holders and ITAP (permanent stay permit) holders about to enter Indonesian territory. As a result, every People's Republic of China citizen within Indonesian territory was granted an emergency stay permit.

This temporary cessation of entry with special subjects for People's Republic of China citizens is the government's first action in preventing the initial spread of the Covid-19 virus from abroad. However, specific restrictions on certain countries are taken because the disease was still considered an epidemic from the People's Republic of China in the early days. Therefore, the temporary cessation only targets the citizens of the country following the PHEIC determination.

3.3 Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2020 concerning Granting of Visas and Stay Permits in Efforts to Prevent the Entry of the Corona Virus. Issued on February 28, 2020.

This regulation repealed previous regulation and stipulated a renewal with orientation to preventing the Coronavirus from entering Indonesian territory. The renewal constitutes issuing a visit visa and stay-permit visa for foreigners who applied for a visa in the Indonesian embassy in the People's Republic of China. The regulation requires that applicants from the People's Republic of China enclose coronavirus examination tests in English from the local health authority. Applicants must also state their agreement to be placed in a quarantine facility for fourteen days upon entering Indonesian territory. If they are found to be infected with Coronavirus during quarantine, they would be denied entry to Indonesian territory. For People's Republic of China citizens who are already in Indonesia, they would be granted a stay permit in a state of emergency due to the coronavirus outbreak that WHO has determined, and the absence of transportation means that can take them out from the Indonesian territory to the People's Republic of China.

An additional requirement is a health certificate from the local health authority in English and the willingness to be quarantined upon arrival in Indonesia. It is an irony because, on the one hand, the opening of access is granting alternative visas, different from those previously applicable to subjects of People's Republic of China citizens, from their home countries to certain areas that are declared free from Coronavirus, made a tightening of implemented entry policy instead increases the chance of spreading from foreigners who were previously abroad. But, on the other hand, this policy shows that the economic factor is still a difficult choice to rule out at the early stages of this pandemic.

In the development of coronavirus cases, the spread that caused massive deaths due to Covid-19 did not only occur in the People's Republic of China but also South Korea, Iran, and Italy. These cases made the Indonesian government decide to reject all visa applications submitted by foreigners who have been in or visited the People's Republic of China, South Korea, Iran, and Italy within fourteen days by a circular letter from the Director-General of Immigration issued March 6, 2020.

3.4 The Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 8 of 2020 concerning Temporary Cessation of Exemption Visa and Visit Visas on Arrival and Granting of Compulsory Stay Permits, issued on March 18, 2020.

This regulation was issued to prevent the spread of Coronavirus in Indonesia and make certain the legal status of the stay permit holders affected by the lockdown in Indonesian territory, so they cannot fulfill immigration procedures. The foreigners can be granted emergency permits, limited stay permits, permanent residence permits, re-entry permits, and entry signs with reference to previous regulations. The regulation constitutes the procedure for visa issuance in the Indonesian embassy in foreign countries and emphasizes temporary termination of the issuance of exemption visas and on-arrival visas. The regulation also constitutes the authority of the Minister of Law and Human Rights of the Republic of Indonesia to issue other policies concerning immigration facilities considering the public interest.

3.5 Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2020 concerning the Temporary Prohibition of Foreigners from Entering the Territory of the Republic of Indonesia, issued on March 31, 2020.

This regulation was issued as a follow-up to the President of the Republic of Indonesia Decision Number 11 of 2020 concerning The Determination of Public Health Emergencies Due to Covid-19 and Regulation of the Government of the Republic of Indonesia Number 21 of 2020 concerning Large Scale Social Restrictions in Order to Accelerate the Handling of Covid-19. The restrictions are on certain activities of residents in areas suspected of being infected with Covid-19 to prevent its spread. So it is necessary to manage border management that is adjusted to the precarious conditions and public health emergencies occurring at that time.

One of the efforts made by the government to improve the prevention of the spread of the Covid-19 virus in Indonesia territory is by prohibiting foreigners from visiting or transiting in Indonesian territory, except for foreigners holding ITAS (temporary stay permit) and ITAP (permanent stay permit), foreigners holding diplomatic and service visa, foreigners holding diplomatic and service stay permit, medical assistance and volunteers, for logistic and humanitarian reason, flight crews, and foreign workers on national strategic projects. Additionally, foreigners who had been in Indonesian territory were to be granted emergency stay permits automatically without reporting to the local immigration office. Thus, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2020 concerning Granting of Visas and Stay Permits in Efforts to Prevent the Entry of the Corona Virus and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 8 of 2020 concerning Temporary Cessation of Exemption Visa and Visit Visas on Arrival and Granting of Compulsory Stay Permits, have been revoked and declared null and void.

Without overriding the implementation of large-scale social restrictions, national strategic projects having a high level of urgency to be realized in the short term are also an effort to maintain economic growth and national development through infrastructure development, as mandated in President Regulation Number 56 of 2018 Concerning The Acceleration of The Implementation of National Strategic Projects. The regulation has decided 223 projects to be implemented, divided into 17 (seventeen) general project categories and 8 (eight) other strategic science and technology infrastructure projects developed in all provinces in Indonesia. This regulation means that foreigners could only be accepted for the purpose of national projects. However, the agreement is highly dependent on the

central government's decision, while the local community has no say on the decision to permit the arrival of those foreigners in their community during this lockdown period.

During the implementation period of the temporary prohibition of entry into Indonesian territory for foreigners, the Director-General of Immigration also issued several circulars explaining immigration technical matters in issuing residence permits for foreigners, especially regarding granting emergency stay permits to all foreigners in Indonesia. While, on the one hand, there are many variations in the types of residence permits for foreigners in Indonesia and their respective problems. This explanation is important to develop common perceptions in decision-making in the field regarding foreigners' residence permits during this period of entry prohibition.

3.6 Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 26 of 2020 concerning Visas and Stay Permits in the New Normal, issued on September 29, 2020.

This regulation was issued to boost the revitalization of the national economy during the new normal life and revoke the previous policy in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2020 concerning the Temporary Prohibition of Foreigners from Entering the Territory of the Republic of Indonesia. This regulation is stipulated by adhering to the health protocol and becomes a strategic policy unit that is integrated and inseparable from the President Regulation Number 82 of 2020 Concerning the Committee for Handling Covid-19 and Recovery for National Economy.

The renewal contained in this regulation is a change in the criteria for foreigners exempt from the prohibition of entering Indonesian territory. It can be interpreted that every foreigner would be allowed entry after fulfilling the requirement of strict health protocol and enclosing the Coronavirus-negative PCR test result. This requirement did not apply to applicants of exemption visas and on-arrival visas. Applicants of visit visas and temporary stay permit visas must have an Indonesian sponsor by submitting a visa application in Indonesia to the Director-General of Immigration either directly or electronically. They must also enclose a minimum required fund of US\$ 10.000 or equal to cover their living cost in Indonesia. This regulation also provides sanctions for foreigners who do not meet the provisions will be subject to immigration administration action under the immigration law.

During the implementation period of this ministerial regulation, economic life has slowly begun to return with the arrival of foreigners who would enter as foreign workers and foreign investors who will invest in Indonesia. The foreigners are required to have a guarantor and guarantee funds; they need to go through selectivity for foreigners who could enter and reside in Indonesia. According to the national immigration policy, only foreigners who provide benefits to the country are allowed to enter and reside in the territory of Indonesia.

3.7 Justice Value for Society Inside Visas and Stay Permits in the New Normal

In the government's view, the enactment of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 26 of 2020 concerning Visas and Stay Permits in the New Normal is a form of legal certainty. This addresses many problems regarding foreigners during the pandemic, such as foreigners spreading new viruses variants from India or not complying with health protocols set by the government (such as the case in Bali). Currently, due to the surge in Covid-19 cases, the government has imposed Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 27 of 2021 concerning the Restriction of Foreigners from Entering the Territory of the Republic of Indonesia During The Period of Restriction on Emergency Community Activities, issued on July 19, 2021. In addition, the government has made efforts to maintain national economic growth so that the community's economy can also continue. However, some people see that granting work permits to foreign workers in Indonesia when economic conditions at the micro-level are still shaky is a form of structurally created injustice. It can be seen in the demonstration of the Kendari community, who refused and opposed the arrival of foreign workers coming from the People's Republic of China who would work in the Konawe industrial area in Kendari, Southeast Sulawesi [5].

According to the theory of justice, however, the method to accommodate different interests is to find balance among those interests without giving special attention to them. The only way we can make out justice is to imagine a situation where we do not have or have not had those interests. It should be implemented according to the interest and needs of the local community in Jepara, as observation shows during the pandemic over Jepara District Foreign Surveillance Team Meeting (Timpora Kabupaten Jepara). Rustamaji, Head of National Unity Division on The National and Political Unitary Body of the

District of Jepara (Bakesbangpol Kabupaten Jepara), informs that local communities prefer not to have foreigners around during the pandemic. Even though these foreigners came bringing foreign investment, the value and benefits they provided to the local community did not have any significant impact, for they tended to choose foreign workers from their home countries to supervise local workers. Mukholik, Intelligence Section Officer on Jepara Military District Command (Kodim 0719/Kabupaten Jepara), also said that some local people argued that the increase of Covid-19 cases in Jepara was due to the of local workers to keep working without a clear shift limit as regulated by government policy. For society, economic loss due to the pandemic makes economic recovery a priority over other interests. Society's interests are more than just medical protection and assistance for those vulnerable to the pandemic; local society must also be granted access to strategic economic resources like permanent jobs. In this case, job markets should be prioritized for Indonesian citizens instead of foreign workers. This arrangement is in the interest of Indonesian society to boost their economic stability during the pandemic.

According to the second principle, equal opportunity, the distribution of income and wealth and authority hierarchy must be consistent with the intended freedom of civil and opportunity equality. However, further analysis shows that the regulations of visas and stay permits for foreigners during the new normal have attempted to carry out the principle of selective immigration policy as the spirit of immigration law. In short, equality of opportunity between foreigners and local citizens must be carried out in a just and fair way through equal distribution of income and wealth by abolishing special consideration to foreign workers in each foreign investment process in Indonesia, such as the case of Jepara, foreign workers should be limited in number and job markets prioritize for Indonesian citizens instead. Even though the state currently faces pressure to strengthen economic globalization post-Covid-19 pandemic, a wave of international migration will be normally huge as before, the power of the state to control immigration remains strong so that it can be used to uphold justice [6]

This right is an inseparable part of the justice point of view and must be constructed in congruency with the visa and stay permit issuance policy during the new normal life. For Radbruch, the fulfillment of the legal certainty aspect must be accompanied by a guarantee that the formulated law contains the value of justice and norms that promote goodness to fellow

human beings. The implication is that the law will function as regulations that are obeyed.

Justice value must be explained clearly on Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 26 of 2020 concerning Visas and Stay Permits in the New Normal that the granting of visas and residence permits for foreigners goes through a series of gradual and tiered examinations involving related government agencies, especially the Ministry of Manpower regarding permits for foreign workers, and the Indonesia Investment Coordinating Board (BKPM) regarding foreign investment. Therefore, the expected output is in the form of permits granted following the priority scale set by presidential regulations in national strategic projects.

This output should be known and explained to the public in a clear and measurable manner because it should be a mechanism to close the gap on the social and economic differences so that all parties' interests are met with satisfaction, especially local societies living close to national strategic projects employing foreign workers. This idea is important to prevent more rejection against foreign workers by local communities, such as the demonstration over the arrival of Chinese workers in Kendari, Southeast Sulawesi, and observation result in Jepara, Central Java. Regulations should arrange for limiting the number of foreign workers and prioritizing job market opportunities for Indonesian citizens instead of foreign workers. As Rawls said, injustice is simply inequality where all do not enjoy benefits. Therefore, the regulation of visas, entry permits, and stay permits for foreigners, either through prohibitions or restrictions stipulated in the Regulation of the Minister of Law and Human Rights during the new normal period, should be utilized not only to provide benefits for the country as a whole but also to fulfill a sense of justice for the society.

4. CONCLUSIONS

The coronavirus pandemic is a horrible disaster and extraordinary situation experienced at the global level. As a result, an international mobilization of people among countries is limited, giving negative impact and chaos to the economic stability of all countries, including Indonesia. Every implementation of efforts to improve and restore the national economic condition is not only a burden and responsibility of the government but also every element in society to build national resilience. The five Regulations of the Minister of Law and Human Rights of the Republic of Indonesia issued to

accommodate entry permits and stay permits during the new normal period for foreigners in Indonesia, from the government's perspectives, are a form of legal certainty to ensure that the presence of foreigners in Indonesia during the pandemic can provide the greatest benefit to the Indonesian state through the development of national strategic projects. Therefore, the regulations' formula contains the value of justice and norms promoting goodness to fellow human beings, so the regulations should be utilized not only to provide benefits for the whole country but also to prevent more rejection against foreign workers by local communities, such as the case of demonstration over the arrival of Chinese workers in Kendari, Southeast Sulawesi and observation result in Jepara, Central Java. Because some people see that granting work permits to foreign workers in Indonesia, when economic conditions at the micro-level are still shaky, is a form of structurally created injustice.

Researches suggest that to fulfill a sense of justice for the society, arrangements for foreign workers should be limited in number, and job markets opportunities are prioritized for Indonesian citizens instead of foreign workers. Hopefully, the arrangement would be a mechanism to close the gap on social and economic differences so that all parties' interests can be met with satisfaction, especially the local societies living close to national strategic projects employing foreign workers.

REFERENCES

- [1] J. Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971. pp. 15
- [2] B. Tanya and M. Hage, *Legal Theory, Human Order Strategy Across Space and Generation*. Yogyakarta: Genta Publishing, 2010. pp. 115
- [3] T. Huijbers, *Legal Philosophie in Historical Line*, 20th ed. Yogyakarta: Kanisius, 2018. pp. 76
- [4] C. Koswala, *Indonesia Immigration Policy During Covid-19 Pandemic Period*. Jakarta: Mahara Publishing, 2020. pp. 153
- [5] A. Dkk, "Public Information and Opinion on the Arrival of Chinese Workers during the Covid-19 Pandemic in Southeast Sulawesi," *J. Ilmu Komunikasi*, vol. 8, no. 3, pp. 280–291, 2020.
- [6] A. Indrady, "A Critical Assessment on the Indonesian Free Visa Policy: A Neorealist Perspective," *Glob. J. Polit. Int.*, vol. 22, no. 1, pp. 54–76, 2020.