

The Discrepancy of Legal Provisions Regarding the Electronic Identification Card (e-KTP) for Foreigners: Immigration Perspective

Bagas Hidayat Putra^{1,*} Aisyah Mila Riski¹

¹ Directorate General of Immigration, Ministry of Law and Human Rights, Republic of Indonesia

*Corresponding author. Email: bangbgs@gmail.com

ABSTRACT

Everyone has a personal identity card as a form of residency. Therefore, in order to provide an acknowledgment, determination, and protection of personal status and legal status, it is necessary to have an administratively valid residence instrument, namely an identity card or currently packaged in the form of an electronic identity card. Based on Article 63 paragraph (1) of Act Number 24 of 2013 concerning Population Administration which has explained that residents of Indonesian citizens and foreigners who have a permanent residence permit or ITAP are 17 years or have married or have been married are required to have an electronic identity card. The impact of this policy is the emergence of a critical point of the discrepancy between the identity card policy for foreign citizens and the ITAP card or KITAP policy from immigration. This research uses a qualitative research method that aims to comprehensively explain the legal provision of foreign citizen electronic identification cards, specifically from an immigration perspective.

Furthermore, this research also aims to explain their positive and negative impacts and to answer some of the questions that occur in public regarding the existence of this identity card. Thus, the results of this research can explain explicitly that the electronic identity cards for foreign citizens aim to be a single identity in the era of digitalization and this new normal era. However, in terms of its application, there are still some colliding obstacles, such as there is a need for data integration between related ministries or agencies, especially concerning its implementation with the immigration perspective.

Keywords: *electronic identification card, legal provision, KITAP, immigration perspective.*

1. INTRODUCTION

The dimension of human rights is a very important piece in the life of the nation and state. The importance of human rights in the life of the nation and state has made human rights one of the conditions for a country to be considered a constitutional state. As Indonesia is a constitutional state, and the People's Consultative Assembly of the Republic of Indonesia has provided in Article 1, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, state power is exercised based on the rule of law [1].

Human rights in a modern constitutional state have been accommodated in its constitution to a lesser extent. Indonesia also places human rights into the constitution of the 1945 Constitution of the Republic of Indonesia. When discussing state administration, human rights become the foothold of the government in its activities.

In the government's efforts to exercise its power, the state is also responsible for protecting the entire nation and all the citizens of Indonesia, referring to the ideals of the nation as stated in the preamble to the 1945 Constitution of the Republic of Indonesia, the fourth paragraph [2].

It is necessary to highlight as a basic explanation that according to Article 26, paragraph (2) of the 1945 Constitution, citizens are Indonesian citizens and foreigners residing in Indonesia [3]. And according to Britannica, the human population is the total number of people who occupy an area [4]. Law Number 6 of 2011, Article 1, point 9 explains that foreigners are people who are not Indonesian citizens [5].

The composition of a country's population is not only limited to Indonesian Citizens (WNI) but also includes residents in the case of Foreign Citizens (WNA) who reside and live in Indonesia. Of course, both Indonesian citizens and foreigners have certain rights and obligations

regulated by statutory regulations. As the first step in a long journey to protect their citizens, the government through Act Number 24 of 2013 amendments to Act Number 23 2006 concerning Population Administration [6] which later became the legal basis for implementing governance in the population sector.

In this context, foreigners included in the provisions above are required to have an electronic identification card (e-KTP) as another identity other than a passport. Furthermore, according to Article 63, paragraph (4) of Law Number 24 of 2013, the foreigner referred to in paragraph (1) is required to report an extension of the validity period or replace the e-KTP to the Implementing Agency no later than 30 (thirty) days before the expiration date of ITAP [7].

Even the existence and use of e-KTP for foreigners is reaffirmed by the explanation stated in Article 63, paragraph (5) of Act Number 24 of 2013 that residents who already have e-KTP are required to carry them wherever while traveling; of course, this includes foreigners who meet the provisions as previously explained [8].

Also, after a series of general explanations about the existence and function of the e-KTP for foreigners above, a polemic arises regarding the aspects of immigration they have. For example, from an immigration perspective, don't foreigners already have a travel document as their identity and a residence permit as their permit status?

Therefore, this research paper has two main research questions. First, what are the actual legal provisions regarding the management and use mechanism of foreign citizen electronic identification cards? And second, what is the ideal condition that could resolve from the implications of those two legal provisions? Those two main research questions had some purposes, such as comprehensively explaining the legal provisions of foreign citizen electronic identification cards, explaining their positive and negative impacts, and answering some of the questions in public regarding the existence of this identity card.

As a follow-up, it was discovered that several previous pieces of research had discussed the implications of foreign citizen electronic identification cards and the function of foreign citizen electronic identification cards, such as research from Linda Rahmawati [9] discussing the implications of foreign citizen electronic identification card in population administration and elections and also research from Arne Hintz et al. [10] that discussing Citizenship and Digital Surveillance. Therefore, this research paper aims to provide awareness regarding the existence of a legal provisions disharmony between two different policies with the same function. This research paper provides a novelty that has goals and results, such as the current

conditions, the ideal conditions, and what must be done so that the true goals of e-KTP can be achieved without any discrepancy or overlapping legal provisions.

2. RESEARCH METHOD

This research uses a qualitative research method [11] that aims to comprehensively explain the legal provisions of foreign citizen electronic identity cards, explain their positive and negative impacts and answer some of the questions that occur in public regarding the existence of this identity card.

And this research presents a discussion by applying a systematic procedure reviewing or evaluating document/document analysis [12] and content analysis [13]. Thus, the results of this research can explain explicitly that the electronic identity cards for foreign citizens aim to be a single identity in the era of digitalization and this new normal era. However, in terms of its application, there are still some colliding obstacles, especially about its implementation from the immigration perspective.

Also, using content analysis, this research provides a novelty that has goals and results such as what conditions are currently happening, conditions that should occur, and what must be done so that the true goals of e-KTP can be achieved without any disharmony or overlapping policies.

3. FINDINGS AND DISCUSSION

This research paper has two main findings, which have been packed into discussions of those 2 (two) previous research questions, specifically the functions and purposes of e-KTP for foreigners and an explanation about e-KTP for foreigners from an immigration perspective.

3.1. e-KTP for Foreigners: Functions and Purposes

As general information, according to estimates from the World Bank's ID4D database, almost one billion people globally lack any form of legally recognized identification. An additional 3.4 billion who have some type of legally recognized identification have limited ability to use it in the digital world. The remaining 3.2 billion have a legally recognized identity and participate in the digital economy but may not use that identification card effectively and efficiently online [14] (Fig 1.). E-KTP holds the promise of enabling economic value creation for each of these three groups by fostering increased inclusion, which provides greater access to goods and services; by increasing formalization, which helps reduce fraud, protects rights, and increases transparency; and by promoting digitization, which drives efficiencies and ease of use [14].

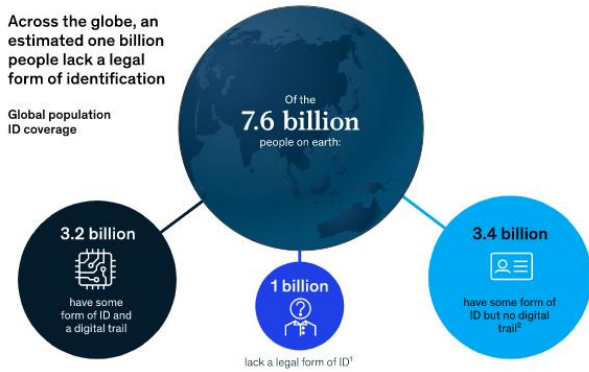


Figure 1 Global Population Identification Coverage (by McKinsey Global Institute)

Furthermore, individuals can use e-KTP to interact with businesses, governments, and other individuals in six roles: consumers, workers, microenterprises, taxpayers and beneficiaries, civically engaged individuals, and asset owners (Fig 2.). Correspondingly, institutions can use an individual's identity in a variety of positions: as commercial providers of goods and services, interacting with consumers; as employers, interacting with workers; as public providers of goods and services, interacting with beneficiaries; as governments, interacting with civically-minded individuals; and as asset registers, interacting with individual asset owners. In our analysis, we quantify the benefits of e-KTP through bottom-up microanalysis of nearly 100 ways of using e-KTP, organized by the roles played by individuals and institutions [14].

Individuals use digital ID in six roles to interact with institutions and create shared value.

Our analysis examined in detail nearly 100 use cases across six roles

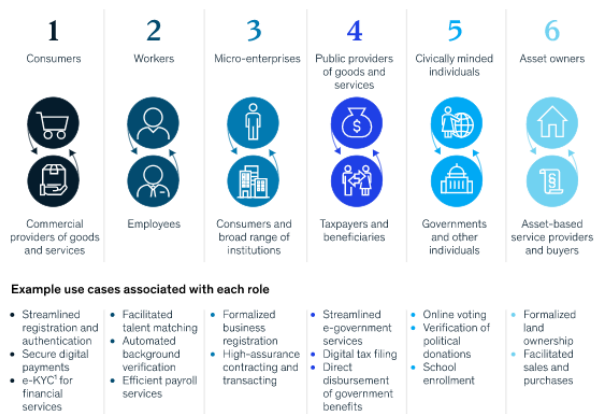


Figure 2 Six Main Roles of e-KTP (by McKinsey Global Institute)

In Article 1, number 13 of Act Number 6 of 2011 concerning Immigration has been explained that travel documents are official documents issued by authorized officials of a country, the United Nations, or other international organizations to travel countries issuing the identity of the holders to another[5].

Meanwhile, according to Article 1, number 21 of Act Number 6 of 2011, a residence permit is granted to foreigners by immigration officials or foreign service officials to reside in the Indonesian territory.

Back to the main discussion concerning foreigners possessing ITAP. They are included in the class of foreigners who are required to have an e-KTP. It should be noted that foreigners can have ITAPs with different processes depending on the status of their previous residence permits. As long as they have not received ITAP, they live in Indonesia using a Limited Stay Permit (ITAS). The document is valid for two years and can be extended up to a maximum of 6 years.

In summary, to get ITAP, foreigners with foreign workers, investors, or clergy status must stay in Indonesia for three consecutive years. Meanwhile, foreigners who are married to Indonesian citizens must stay for at least two consecutive years.

Indonesia requires foreigners under certain conditions to have a KTP, as regulated in Article 63 and Article 64 of Act Number 24 of 2013, the First Amendment to Law 23 of 2006 concerning Population Administration. The following reads Article 63 of the Population Administration Act:

- 1) Indonesian Citizens and Foreigners who have a Permanent Stay Permit who are 17 (seventeen) years old or have been married or have been married are required to have an e-KTP;
- 2) The e-KTP as referred to in paragraph (1) shall apply nationally;
- 3) Foreigners, as referred to in paragraph (1) must report the extension of the validity period or change the e-KTP to the Implementing Agency no later than 30 (thirty) days before the date of the expiration of the Permanent Stay Permit;
- 4) Residents who already have e-KTPs are required to carry them when traveling; and
- 5) Residents, as referred to in paragraph (1), only have 1 (one) e-KTP.

Simply put, an "electronic identity" is a way for people to prove by electronic means that they are who they say they are and thus gain access to services. The identity allows an entity (citizen, business, administration) to be distinguished from any other [15].

E-KTP has an implicit main function, specifically as a public service. So, regarding this issue, the Head of the Directorate of Civil Registry Service has emphasized that the regulations for KTP for foreign citizens are already popular in several developed countries, while the main objective is to realize the concept of a single identity number.

It means that every single citizen in Indonesia is recorded in a single data for all access to services. For example, bank data, sim cards, and others use Population Identity Number (NIK). So, the basic elements of the

willingness to progress like other countries, of course, are found in population data. From the population data recorded in the system, government population administration can adjust policies taken by considering the quantity of the population's presence country residing in its territory [2].

Now, what is beginning to be felt is a function of the single identity number. Thus, the main key is the use of NIK numbers. The NIK on the e-KTP shows many things, from what is listed, such as an address, blood type, marital status, and biometric data, namely fingerprints and retina. This concept is the basis of Act Number 24 of 2013 amendments to Act Number 23 2006 concerning Population Administration to create a population integration paradigm, both for WNI and WNA in a comprehensive manner [16].

Foreigners who have a Permanent Stay Permit and Foreigners who have a Limited Stay Permit are required to report to the Department of Population and Civil Registration carrying the following requirements:

- 1) Are seventeen years old or already married or have been married;
- 2) Cover letters for RT, RW, and Head of the Village;
- 3) Photocopy of: family registers, quotation of birth certificate and excerpt of marriage certificate for residents who are not yet seventeen years old; and
- 4) Certificate of Arrival from Abroad issued by the Department of Population and Civil Registration for Indonesian citizens from abroad due to moving [17].

Supporting documents for the implementation of the provisions referred to can be carried out in the following manner:

- 1) Foreigners who have a Permanent Residence Permit fill out and sign the Foreigner KTP application form;
- 2) Registration officers verify and validate data;
- 3) The registration officer records the data into the database;
- 4) Head of Population and Civil Registration Service signs and issues Foreigner KTP; and
- 5) In the event that the KTP is issued due to a change in address or an extension, or a change in data for Indonesian citizens or foreigners, the old KTP is withdrawn by the Department of Population and Civil Registration [18].

3.2. e-KTP for Foreigners: Immigration Perspective

Meanwhile, several groups of foreigners can get ITAP without the condition of having to stay in Indonesia first. They are children, wives, husbands of foreigners who have ITAP. There are also former Indonesian citizens and former Indonesian dual citizens. The form of product implementation from ITAS and ITAP itself is

KITAS and KITAP, which are cards like E-KTP, but with different designs and colors.

This was confirmed by the statement of the Minister of Law and Human Rights of the Republic of Indonesia, Yasonna H. Laoly, regarding the differentiation of design and color of e-KTP to prevent misuse of documents and authority [19]. So, yes, this dual-function issue looks similar to the naked eye to the e-KTP, which is interesting to be discussed explicitly below.

For example, in the United States or Taiwan, foreigners will only receive one card as a form of their resident status in that country. The United States with its Green Card [20] and Taiwan with its Alien Resident Certificate [21]. Before getting the card, foreigners only obtained a residence permit in the form of a visa that can be extended or valid for a certain period.

It is different with Indonesia with the current state that each type of license is given a different card. There are KITAS and KITAP, which, when viewed by their function, are similar to the resident cards in the United States and Taiwan, which do not require the obligation to have a resident card similar to those of local residents.

The government's intention to create a single identity database needs to be appreciated, especially since the policy has been ratified through a law. However, issuing an e-KTP to a foreigner seems too risky, especially since KITAS and KITAP have similar functions. Therefore, it's just a matter of designing the data integration, from the immigration at the Ministry of Law and Human Rights and the Population Division at the Ministry of Home Affairs, so that it would be more systematic and coherent.

Indonesia can adopt what has been done by developed countries that have succeeded with a single identity policy with a single card, both for local residents and foreigners. However, if it's still like this, foreigners will hold too many cards and identity numbers if they must have KITAS, KITAP, and E-KTP.

As the country with the fourth-largest population in the world [22], Indonesia faces many challenges to continue organizing population data as one of the determining factors in providing basic services obtained by the community from the government. With the long and tortuous history of the population bureaucracy in Indonesia, this presents its own difficulties and challenges.

What should be done? There needs to be a mental revolution and a true system revolution so that this single population identity problem can be resolved immediately and the public can immediately enjoy maximum service with this e-KTP.

3.3. Results

The integration of the residence number system implemented by the United States and Taiwan governments has been running well and has been integrated with various things without having to have multiple cards; in other words, one card is enough for all basic service access. Therefore, in this case, the perspective of Indonesian immigration must have a broader goal in terms of managing access, especially the polemic of using e-KTP for WNA, which has a disharmony with the provisions of KITAS and KITAP.

If it is the main objective of the formation of the e-KTP card legal provisions is to support the successful implementation of the single identity concept for all Indonesian citizens, it would certainly be even better if the concept used could adapt the concepts from the United States and Taiwan, which focus on singles. Access to various public services. This concept is considered very effective due to the efficiency of bureaucratic management for the government itself, Indonesian citizens, and foreigners as users.

Furthermore, in Indonesia, various efforts have been made in this regard, among others, introducing the concept of Single Identity Number (SIN). SIN is a unique number that is integrated into an individual citizen's identity card. SIN and identity cards will form a national demographic database that can be the single reference for various public service applications. The experience of various other countries in applying SIN and building its national population database serves as a reference. It is concluded that technical, economic, and organizational factors are some of the factors that determine the success of the national demographic database. Combined with identity cards, SIN is the best approach as a "unifying code" that can be used as a reference for various information systems owned by various government agencies without changing the basic form of the agency's database [23].

The purpose of SIN implementation varies in each country, but the management is only done by one agency. The use of concentrated SINs in one agency increases the efficiency and effectiveness of good governance because it can save time, cost, facilities, and resources. Required policy and regulatory support to realize the national population database is a prerequisite of good governance [24]. In the future, SIN and national identity cards will facilitate the application of biometric data. The apparent problem here is that the existing policy has not explicitly stated that the SIN is the only pointer (reference) for obtaining population data. The closest to this SIN concept is the NIK which has been attached to the KTP.

There are three aspects in the concept of content analysis that have been compiled in this study, namely the current state, ideal state, and solutions. Here is some explanation of the results of the content analysis:

First, it was found that there is a discrepancy of functions between the two legal provisions related to e-KTP with KITAS and KITAP, which has created an ineffectiveness against the use of access cards used by foreigners. In this case, there is must be a legal provision that covers the element of effectiveness in public services, especially for foreigners in the immigration perspective, which has the concept of a single identity number (could be integrated with access to health, education, and immigration, for example through one access door with only one card, not just for an identity card). Adopting legal provisions that apply in several related countries, such as the United States and Taiwan in terms of implementing single access with the use of one platform or platform is one of the effective solutions to optimize the function of e-KTP in Indonesia (furthermore, it refers to the implementation of a single identity number).

Second, it was found that the concept of a single identity number has not been implemented optimally and comprehensively. In this case, there is a need for further studies and research related to the planning and implementation of the single identity number concept in Indonesia. Further research could be a good solution in stages by conducting a benchmark for several countries that have successfully implemented the single identity number concept in a real and broad way to all of their communities, both local and foreign.

Third, it was found that there is no legal or regulatory stipulation regarding integration between all platforms and public services with the single identity number program. In this case, the need for legal provisions and their existence greatly affects the effectiveness of an ongoing legal provision. Therefore, creating a regulation or legal provision is a proper solution for integrating all public service access into a single platform. This can be one of the right answers in terms of regulating the operation of the single identity number concept.

4. CONCLUSION

Based on the discussion above, it is clear that the Act Number 24 of 2013 amendments to Act Number 23 2006 concerning Population Administration, which includes provisions related to e-KTP for WNA, has a function that collides with the immigration law provisions related to KITAP and KITAS in Act Number 6 of 2011 concerning Immigration so that this has resulted in a discrepancy of legal provisions as well as, naturally, public confusion.

In this case, it is not the differences regarding definitions or understandings related to foreigners, citizens, or populations that are the basis for discrepancies, but the function of e-KTP as the identity of foreigners having the same basic function as the KITAS and KITAP stamps.

Indeed, the government's goal of stipulating the e-KTP provisions for WNA is an effort to implement the concept of a single identity in Indonesian society regarding access to public services in one platform in the future. However, in its implementation, several obstacles were found that hindered the process of implementing the concept, one of which was a discrepancy with legal provisions related to the definition and function of the e-KTP for those WNA. Therefore, there is a need for unification or the concept of integrating functions into just one card for all functions and access by foreigners in Indonesia.

Synergy is needed between the Ministry of Law and Human Rights and the Ministry of Home Affairs, especially the Directorate General of Population and Civil Registration with the Directorate General of Immigration regarding the harmonization of regulations on e-KTP that are given to WNA to clarify their functions and objectives. In addition to applying the SIN concept, the need for synergy with other public service institutions is an obligation that must be examined immediately.

This research strongly recommends undertaking research or further study of the concept, planning, and development related to SIN to create a benchmark that can develop into a result of the adoption of several countries that have successfully developed the SIN concept optimally. Furthermore, this research also recommends a regulatory guide as the basis for legal provisions related to the integration of all data collected on a platform with the aim of single access from one platform; an example of this is the e-KTP function.

With the explanation regarding the gap and critical point between the two legal provisions above, it is hoped that this research can provide a new idea that is open to meeting the needs of the government to realize the SIN concept by paying attention to the functions contained in each public service institution, in particular the aspect of immigration. For example, is the immigration aspect ready to implement public access through one platform such as e-KTP? Or do we need a legal provision for data integration of all public service institutions into one access platform? Of course, this is the material for further study or further research.

AUTHORS' CONTRIBUTIONS

The authors declare contribution to the paper as follows: study conception and design: Bagas Hidayat Putra, Aisyah Mila Riski; data collection: Bagas Hidayat Putra; analysis and interpretation of results: Bagas Hidayat Putra, Aisyah Mila Riski; draft manuscript preparation: Bagas Hidayat Putra. All authors reviewed the results and approved the final version of the manuscript.

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