

# Implementation of Law Enforcement for Business Crime Which is Performed by Illegal Foreign Work

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## **Abstrak**

*The main purposes of this study are: 1) To find out and analyze the forms of business crimes committed by illegal Foreign Workers related to violations of Immigration laws. 2) To find out and analyze immigration law enforcement against illegal Foreign Workers who commit immigration violations. The research method used in this study is a normative juridical study that takes a qualitative approach that looks at and analyzes the legal norms in existing legislation and sociological research as supplementary data to the primary data. The results of this study are: 1) Business crimes committed by illegal foreign workers related to immigration violations, namely the implementation of the Asean Economic Community (AEC) and the introduction of a visa-free policy to encourage and enhance economic growth have an impact on the uncontrolled presence of illegal foreign workers in Indonesia where from the implementation of the AEC and the implementation of the visa-free policy many of the foreign citizens, especially from China who abuse the visa-free policy that should be used for travel but instead used to find work/conduct business activities in Indonesia. 2) Immigration law enforcement against illegal Foreign Workers who commit violations of immigration criminal acts can be prosecuted in two ways, namely the prosecution process in a court or pro justitia and administrative or immigration acts*

**Keywords:** Law Enforcement; Business Crimes; Foreign Workers

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## **1. Introduction**

The development and progress of science, technology, and communication and transportation in recent years has made the distance between countries in the world closer. National boundaries are becoming increasingly blurred or even seem to be borderless, so that everyone can travel from one country to another in only a very short time and can even travel to a country and return on the same day. Generally, people travel for layovers, temporary stays, short visits, visiting relatives, doing business, socio-cultural visits, studying, working, government assignments, meetings, tours or for family union.

The development of technology brings world globalization, a very broad impact on all aspects of human life, both in terms of economic, political, social, defense and security aspects of a country, to aspects of people's mobility. The mobility of people referred to here is the mobility of people under normal

conditions voluntarily, safely and peacefully, without conflicts of desire or other motivating reasons, which are still within reasonable limits.<sup>1</sup>

The development of globalization encourages the movement of capital and investment flows to various parts of the world, there is also population migration or labor movements between countries.<sup>2</sup> The labor movement takes place because investments made in other countries generally require direct supervision by the owner/investor.

Considering the above, in order to improve relations between countries, especially between Indonesia and other countries, it is necessary to have a foreign policy. Foreign policy is one of the strategies in fulfilling national interests. Every action or decision made by the government of a country against another country is carried out with the aim of realizing cooperation in various fields. The state has the sovereignty to regulate and establish relations with other countries where this is done in order to achieve national goals. Thus the foreign policy carried out by the government of a country aims to achieve the national interests of its people.

According to Mark R. Amstutz, defines foreign policy as explicit and of governmental officials designed to promote national interests beyond a country's territorial boundaries.<sup>3</sup>

Cooperation is a form of foreign policy. Cooperation is carried out with the aim of achieving national interests. On August 8, 1967 in Bangkok, Thailand, five representatives of Southeast Asian countries/governments, namely: Minister of Foreign Affairs of Indonesia (Adam Malik), Deputy Prime Minister concurrently Minister of Defense and Minister of National Development Malaysia (Tun Abdul Razak), Minister The Philippines' Foreign Minister (Narciso Ramos), Singapore's Minister of Foreign Affairs (S. Rajaratnam), and Thailand's Minister of Foreign Affairs (Thanat Khoman) followed up the joint declaration by holding a meeting and signing the ASEAN Declaration, also known as the Bangkok Declaration.

Each country has a comparative advantage, as well as ASEAN countries, the eight priority sectors of goods to be integrated at least each country have at least one priority sector comparative advantage. Indonesia has a comparative

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<sup>1</sup>Widjajanto, *Surat Perjalanan Republik Indonesia* (Jakarta: Kemenkumham RI, 2001).

<sup>2</sup>Abubakar ISKANDAR, Oetje SUBAGDJA, and Zahid MUBAROK, "Policies and Implementation of Worker Empowerment in Chinese Companies in Konawe District, Southeast Sulawesi Province," *Geojournal of Tourism and Geosites* 38, no. 4 (2021), <https://doi.org/10.30892/GTG.38405-739>.

<sup>3</sup>Aleksius Jemadu, *Politik Global Dalam Teori dan Praktek* (Yogyakarta: PT Graha Ilmu, 2008).

advantage in six sectors, namely tourism, agriculture, wood products, fisheries, agricultural products, rubber and electronics. Looking at the comparative advantage that Indonesia has, of course, it is relatively still able to compete with other ASEAN countries. Furthermore, with its comparative advantage, Indonesia must also be able to increase its competitive advantage.

Indonesia's involvement in the AEC (*MEA: Masyarakat Ekonomi Asean*) can have a positive or negative impact on the Indonesian economy. Prior to the implementation of the AEC, the Asian market was dominated by China and India, but with the presence of the AEC, ASEAN has been ranked 3<sup>rd</sup> in the Asian market.

Basically, MSMEs are indeed a goal and focus of the establishment of MEA to create stability and development in the economy and also one of the potentials that cannot be ignored is tourism potential. In general, Indonesia's tourism potential lies in the diversity of tourism, both in terms of the environment. Its nature (from the top of the mountain to the underwater world), its culture (from language to customs), rich history and so on are supporting the interest of foreign tourists.

The MEA encourages the free flow of services to develop rapidly, considering it is easy for foreign workers to enter Indonesia due to the implementation of the MEA. The use of foreign workers in Indonesia is now unavoidable, especially in the era of globalization.

The main purpose of the AEC itself is a form of economic integration of Southeast Asian countries, which is to be able to achieve ASEAN's goals in the four pillars as mentioned above, so that in line with the implementation of the AEC policy in Indonesia, the way that can be done is to implement the AEC Policy Visa Free.

Investment for many countries is an important factor in creating economic growth. Economic growth that is sustainable and sustainable will ultimately improve the welfare of the community. Therefore, it requires sensitivity from state government officials to provide comfort for investors in investing their capital. One of the efforts is to apply certain treatment standards.<sup>4</sup>

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<sup>4</sup> Martin Roestamy, "Konsep Kepemilikan Rumah Bagi Warga Negara Asing Dalam Rangka Percepatan Peningkatan Investasi Di Indonesia," *De'Rechtsstaat* 2, no. 2 (2016): 127–40, <https://doi.org/10.30997/jhd.v2i2.681>.

The visa-free policy that has been carried out is related to the MEA policy and labor freedom, which is regulated by the government in order to get greater benefits. However, the visa-free policy is in fact contrary to the selective policy system contained in Article 8 of Law Number 6 of 2011 concerning Immigration. The impact on the legal politics of the national Immigration policy that occurs as a result of the MEA agreement which will eventually lead to a visa-free policy, opening up opportunities for an open system (open door policy). The open door policy is a change from the immigration law politics which was previously selective to open. Immigration law politics carried out through selective policy requires certain requirements that must be met, such as having a valid and valid travel document, for foreigners who will enter the Indonesian Territory either to determine, travel, or other interests that clearly do not conflict with the interests of the Indonesian people. Meanwhile, the open door policy does not require any of the things mentioned above.

Currently, passport forgery is very sophisticated, carried out by irresponsible people. Passport forgery is a crime committed by replacing, changing part or all of a passport or using false information to receive a passport. This crime is often used to gain illegal entry into a country, and is also linked to international crimes such as drug trafficking and terrorism.<sup>5</sup>

Like the People's Republic of China, Indonesia provides visa-free for its citizens, but they do not provide visa-free for Indonesian citizens, this is something that must be considered because our country easily grants visa-free to 169 countries. However, Indonesian citizens cannot get visa-free for all countries that are exempted from visas by our country. In the Henley Passport Index list, Indonesia is listed in the 72<sup>nd</sup> position in the world's strongest passport today with visa-free access to 71 countries.<sup>6</sup> The Henley Passport Index is one of a number of lists created by financial companies that rank a country's passports based on the access that governments give their citizens.<sup>7</sup> The list was compiled based on data provided by the International Air Transport Authority (IATA) and includes 199 passports and 227 countries.

The weakness of implementing an open door policy can have a negative impact on Indonesia because it is possible for foreigners to abuse the visa-free visa granted by Indonesia. The issue of open door policy becomes a new problem

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<sup>5</sup>Zulfi Diane Zaini and Luki Oktaviani Brilliant, "Analisa Yuridis Pelaku Pemalsuan Data Untuk Mendapatkan Paspor Pada Kantor Imigrasi Kelas 1 TPI Bandar Lampung," *Jurnal Ilmiah Dunia Hukum* 6, no. 1 (October 2021): 11, <https://doi.org/10.35973/jidh.v6i1.2615>.

<sup>6</sup>Henley Passport Index, "Japanese Passport Visa-Free to 191 Countries, Indonesia Only 71," n.d.

<sup>7</sup>Index.

when there is a problem regarding abuse of authority related to foreign workers.

Data released by the Ministry of Manpower and Transmigration states that there are discrepancies in the field. For example, it is known that the inclusion of permits that should be experts or managers, turns out to be employed in the middle to lower positions, even as manual labor.<sup>8</sup> Then also the violations committed by foreign workers are working without being equipped with a Foreign Employment Permit (*IMTA: Izin Memperkerjakan Tenaga kerja Asing*) even though they enter legally using tourist visas, business visas, socio-cultural visas and visit visas several times. This is part of a business law crime committed by both illegal foreign workers and by the company itself as an employer of foreign workers because before foreign workers work in Indonesia.

If the foreign worker cannot meet the requirements above but is still able to work in Indonesia using a visa-free tourist visit, it means that the foreign worker is an illegal foreign worker and has committed a business crime because it harms the Indonesian government by not paying taxes, because foreign workers working in Indonesia are subject to income tax. existing in Indonesia in accordance with the provisions of Law Number 36 of 2008 concerning Income Tax (hereinafter referred to as Law Number 36 of 2008) so that the rights and obligations in the field of taxation apply. However, the immigration authorities can only enforce the law in accordance with the provisions of Law Number 6 of 2011 concerning Immigration such as violation of Article 122 letter a of Law Number 6 of 2011 concerning Immigration.

Meanwhile, in the field of manpower, sanctions for violating the use of illegal foreign workers have been regulated in Law Number 13 of 2013 concerning Manpower, for sanctions to be shown to employers of foreign workers rather than to illegal foreign workers. One of the sanctions is that employers of foreign workers who do not have a Foreign Employment Permit (IMTA) can be subject to a prison sentence of 1 to 5 years and a fine of Rp. 100 million up to Rp. 400 million and if the position of the foreign worker does not match the competence and/or the employer does not appoint an accompanying Indonesian Migrant Worker (*TKI: Tenaga Kerja Indonesia*), it can be subject to a prison sentence of 1 to 12 months and a fine of Rp. 10 million to Rp. 40 million.

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<sup>8</sup>Endeh Suhartini, "Legal Politics and Policy Setting of Wage Systems for Creating Social Justice of Workers," *Journal Legal Ethical & Regulation* 1, no. 22 (2019).

Another snapshot of data released by the Directorate of Immigration Supervision and Enforcement of the Directorate General of Immigration, Ministry of Law and Human Rights Republic of Indonesia shows that in the period of 2016 since the implementation of the Asean Economic Community (AEC) policy and the government's policy on visa-free visits until October 2019 there have been around 165 cases of violations Immigration Crimes, especially Article 122 letter a (misuse of Immigration Stay Permits) of Law Number 6 of 2011 concerning Immigration and the case is now in a decision that has permanent legal force (*inkracht van gewijsde*) with the majority of foreigners affected by cases coming from China.<sup>9</sup>

The increasing number of abuses of work permits by foreign workers was conveyed by the Director General of Immigration, Ronny F. Sompie, that some Chinese citizens who came to Indonesia used tourist visas (tourism), but when they got the opportunity, they generally came in groups, they turned into a worker. In addition, data from the Director General of Immigration at the Ministry of Law and Human Rights recorded that in the first three months of 2016 they had carried out deportation actions.

The writing related to the issue of foreign labor has been extensively explored by previous researchers, such as the study conducted by Mohammad Rizal Syahroni et al. titled "The Impact of Visa-Free Visits on Illegal Foreign Workers." The conclusion of this study suggests that the visa-free visit policy has more negative impacts than positive ones, particularly in terms of the proliferation of illegal foreign workers in Indonesia. Therefore, the government should reevaluate and reconsider the implementation of this policy in Indonesia.

In addition to the aforementioned research, there is also a study conducted by Tony Mirwanto with the title "Legal System for Supervising Foreign Workers' Residence Permits for Employment in Foreign Direct Investment Companies in Indonesia." The findings of this research emphasize that the supervision system for foreign workers' residence permits in Foreign Direct Investment (FDI) companies in Indonesia is generally effective. However, challenges arise when the Indonesian government provides facilities such as Visa On Arrival and Free

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<sup>9</sup>Republic of Indonesia The Directorate General of Immigration, "Data from the Immigration Enforcement Section," 2020.

Tourist Visa Visits (BVKW), which can be exploited by foreigners, especially Chinese nationals, for illegal employment.<sup>10</sup>

These previous studies differ from the current research conducted by the author. The first study by Mohammad Rizal Syahroni et al. primarily focuses on the impact of the visa-free visit policy on illegal foreign workers in Indonesia. Its main finding is that the policy has more negative than positive consequences, especially in terms of the increase in illegal foreign workers in Indonesia. The study underscores the need for the government to reassess and reconsider the implementation of this policy in Indonesia. On the other hand, Tony Mirwanto's research centers on the legal system for supervising illegal foreign workers who use visitor residence permits to work in Foreign Direct Investment (FDI) companies in Indonesia. The main finding is that the supervision system for foreign workers' residence permits in FDI companies in Indonesia is generally effective, but challenges arise due to the government's provision of facilities such as Visa On Arrival and Free Tourist Visa Visits (BVKW), which can be exploited by foreigners, especially Chinese nationals. In contrast, the author's research places a stronger emphasis on the discussion of Business Crimes Committed by Illegal Foreign Workers Related to Immigration Violations and Immigration Law Enforcement Against Illegal Foreign Workers Committing Immigration Violations.<sup>11</sup>

Based on the background above, the main objectives of this research are as follows: 1) To discover and analyze the forms of business crimes committed by illegal Foreign Workers related to violations of Immigration laws. 2) To discover and analyze immigration law enforcement against illegal Foreign Workers who commit immigration violations.

## 2. Research Method

The research method employed in this study encompasses a normative juridical approach, where the law is conceptualized as norms, rules, principles, or jurisprudence, and an empirical juridical approach,<sup>12</sup> viewing the law as a

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<sup>10</sup>Oleh Tony Mirwanto, "Sistem Hukum Pengawasan Tenaga Kerja Asing Terhadap Penyalahgunaan Izin Tinggal Kunjungan Untuk Bekerja Pada Perusahaan Penanaman Modal Asing Di Indonesia," *Lex Et Societatis* 4, no. 3 (2016).

<sup>11</sup>Jurnal Inovasi Penelitian et al., "Dampak Bebas Visa Kunjungan Terhadap Tenaga Kerja Ilegal," *Jurnal Inovasi Penelitian* 2, no. 1 (2021).

<sup>12</sup>Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 1 (2015), <https://doi.org/10.25041/fiatjustisia.v8no1.283>.

reflection of societal phenomena, a social institution,<sup>13</sup> or behavioral patterns. The data utilized in this research consist of primary, secondary, and tertiary data, which are subsequently analyzed using a descriptive-analytical approach, ultimately presented in a qualitative manner.

### **3. Research Results and Discussion**

The discussion answers the stated research objectives, and the discussion and research results are explained in a scientific, analytical, critical, and descriptive manner. The discussion description is adjusted to the order of the problems, consisting of sub-chapters.

#### **3.1. Business Crimes Committed by Illegal Foreign Workers Related to Immigration Violations**

After looking at the data and facts in the cases that occurred as described in chapter 3, the author is of the opinion that there are 2 business crimes committed by Illegal Foreign Workers:

##### **3.1.1. Business Crimes related to Misuse of Residence Permit**

The case taken was the case regarding illegal foreign workers, namely 10 (ten) Illegal Foreign Workers from China on behalf of SD, LS, XJ, DY, ZM, HJ, WL, CT, HZ, and YM (use initials), who works at PT. XXXX XXXXX Bogor who does not have a Limited Stay Permit (ITAS: Izin Tinggal Terbatas) but uses a Tourist Visit Visa Free Stay Permit (BVK: Bebas Visa Kunjungan Wisatawan) where the tourist visit visa is used to work as manual labor, meaning that the foreign worker has violated "Article 122 letter (a) of Law Number 6 of 2011 concerning Immigration, namely any foreigner who intentionally abuses or carries out activities that are not in accordance with the intent and purpose of granting a residence permit granted to him shall be punished with imprisonment for a maximum of 5 (five) years and a fine of a maximum of Rp. 500,000,000.00 (five hundred million rupiah)".

In this case the author argues that the Business Crimes committed by Illegal Foreign Workers related to Immigration Violations are:<sup>14</sup>

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<sup>13</sup>Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, 2, 2016.

<sup>14</sup>Joselyne L. Chenane, "Public Opinion on Immigration Law Enforcement, Support for the Police, and Obligation to Report Undocumented Immigrants to the Police," *Race and Justice*, 2022, <https://doi.org/10.1177/21533687221120950>.

- a) Whereas what is meant by "Every Foreigner" can be interpreted as a Foreign Citizen who commits a criminal act of Immigration in the jurisdiction of the Republic of Indonesia with full awareness, mind, health and is able to take legal responsibility.
- b) Whereas what is meant by "deliberately" can be interpreted as the person concerned "knows" that the Immigration Stay Permit he has while in Indonesia cannot be used for work because he uses a Tourist Visit Visa Free (BVK). In this case, the element is intentionally fulfilled because they know that the residence permit given is not allowed to carry out work activities in the territory of Indonesia.
- c) That because the person concerned does not have a Limited Stay Permit (ITAS), it is detrimental to the Indonesian government by not paying taxes because foreign workers working in Indonesia are the subject of income tax in Indonesia in accordance with the provisions of Law Number 36 of 2008 concerning Income Tax (hereinafter referred to as Law No. 36/2008) so that their rights and obligations in the field of taxation apply. However, the Immigration Party can only enforce the law in accordance with the provisions of Law no. 6 of 2011 concerning Immigration. They can be subject to Immigration Administrative Actions (TAK: Tindakan Administratif Keimigrasian) in the form of deportation and deterrence as well as criminal sanctions with a maximum imprisonment of 5 (five) years as stipulated in Law Number 6 of 2011 concerning Immigration.
- d) That the 10 (ten) Illegal Foreign Workers are proven to work as laborers or unskilled workers in the factory, thus violating the Decree of the Minister of Manpower of the Republic of Indonesia Number 228 of 2019 concerning Certain Positions That Can Be Occupied by Foreign Workers because in its provisions foreign workers are not allowed to work as laborers because they enter into the type of unskilled job or manual labor.
- e) Whereas the 10 (ten) Illegal Foreign Workers who work as manual labor have eliminated job opportunities for TKI to occupy positions occupied by TKA.
- f) That violations committed by companies or employers who employ foreign workers as unskilled labor for certain positions that cannot

be occupied by foreign workers have been regulated in the Decree of the Minister of Manpower of the Republic of Indonesia Number 228 of 2019 concerning Certain Positions That Can Be Occupied by Foreign Workers.

- g) That the Company or the employer in using foreign workers and employing foreign workers as unskilled workers may be subject to sanctions based on Article 39 paragraph (4) letter a of the Regulation of the Minister of Manpower Number 10 of 2018 concerning Procedures for the Use of Foreign Workers, that: "Administrative sanctions in the form of revocation of notifications as referred to in paragraph (1) letter c are given to employers of foreign workers who commit violations: employ foreign workers in positions that cannot be filled by foreign workers or positions that are closed to foreign workers as referred to in Article 4 paragraph (3)".

In the case above the author also argues that the case is contrary to the Theory of Justice as a Middle Range Theory. The state of law is a state which is based on law and guarantees justice for all its people. Justice is a condition for achieving happiness in life, justice is a reflection of what is meant by the ideals of the people as stated in the rule of law that envisions the creation of a welfare state. One way to create a prosperous country is that the government is obliged to provide jobs.<sup>15</sup>

When viewed from the case of illegal foreign workers working as factory workers and after the author conducted interviews with related parties that Illegal Foreign Workers who work as the factory workers get a salary that is twice as large as the TKI, so there has been an injustice obtained by the TKI so that it is not in accordance with the theory of Justice and is not in accordance with the provisions of the 1945 Constitution as stated in Article 28D paragraph (2) of the 1945 Constitution by a company that employs foreign workers illegally. The company has harmed the state because the illegal foreign workers do not pay taxes and pay PNBPNBP. Tax levies are used for national development while the results of PNBPNBP are used again to improve public services. Companies are not justified in only achieving profits at the expense of the interests of other parties by illegally employing foreign workers. Companies must carry out their legal obligations, namely

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<sup>15</sup>Mary Romero, "Racial Profiling and Immigration Law Enforcement: Rounding up of Usual Suspects in the Latino Community," *Critical Sociology* 32, no. 2-3 (2006), <https://doi.org/10.1163/156916306777835376>.

by legally employing foreign workers in accordance with the prevailing laws and regulations in Indonesia. Whereas if viewed from the philosophical understanding of the term "business crime", the author is of the opinion that the case is part of a business crime and must be subject to strict sanctions to the perpetrators in order to provide a deterrent effect on the perpetrators not to repeat their actions.

### **3.1.2. Related Business Crimes Providing False Letters or Data or Incorrect Information to Obtain Visas or Residence Permits**

The case taken is the case that occurred at the Immigration OfficeiClass I Non TPI Bogor, namely on March 1, 2018 as 'EC' who is a Turkish citizen who holds a visit stay permit committed a criminal offense against immigration article 123 letter (b) of Law no. 6 of 2011 concerning Immigration, namely "every Foreigner who intentionally uses a Visa or Stay Permit as referred to in letter a to enter and/or be in the Indonesian Territory and is sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)".

In this case the author argues that the Business Crimes committed by Illegal Foreign Workers related to Immigration Violations are:

- a) 'EC' came to the Bogor Immigration Office to extend the B211 visit visa, it is known that the person concerned attached a sponsorship guarantee letter and after field checking by immigration officers it was found that the sponsor was fictitious
- b) Then after doing a field check, 'EC' did a Minutes of Examination by PPNS Class I Immigration Office Non TPI Bogor, it was obtained information that the purpose in question was to extend the visa with a fictitious sponsor because the person concerned did not have a guarantor or sponsor in Indonesia while the validity period of the visa was almost finished, then in the minutes of the inspection it was obtained information that the person concerned had worked illegally in one of the factories in Bogor as a mechanical technician for 52 days.
- c) That because the person concerned does not have a Limited Stay Permit (ITAS), it is detrimental to the Indonesian government by not paying taxes and not paying PNBP, because foreign workers working in Indonesia are the subject of income tax in Indonesia in accordance with the provisions of Law Number 36 of 2008

concerning Income Tax (hereinafter referred to as Law No. 36/2008) so that the rights and obligations in the field of taxation apply.

- d) Enforcement of Immigration Laws carried out by the Immigration Office Class I Non TPI Bogor is to provide Immigration Administrative Actions (TAK) in the form of: a pay fees/fines, deportation and deterrence as well as criminal sanctions with a maximum imprisonment of 5 (five) years as regulated in Law no. 6 of 2011 concerning Immigration.

In this case the author is of the opinion that the Business Crimes committed by Illegal Foreign Workers related to Immigration Violations are in violation of Article 123 letter (b) of Law no. 6 of 2011 concerning Immigration, namely "every Foreigner who intentionally uses a Visa or Stay Permit as referred to in letter a to enter and/or be in the Indonesian Territory".<sup>16</sup>

Letter a in article 123 reads "everyone who knowingly provides false or falsified or falsified letters or data or incorrect information with the intention of obtaining a Visa or Stay Permit for himself or another person".

The definition of the element of providing incorrect information in Article 123 of Law no. 6 of 2011 in the field of immigration is an act committed by a person (a criminal act) in the process of applying for or extending immigration documents by submitting attachments to the requirements regulated by statutory provisions, in the form of letters and so on, containing descriptions, explanations or instructions (information) that contradict or are not in accordance with the actual situation.

In this article, it can be concluded that the first thing the perpetrator does is submit a data application (in the form of a form) and attachments to requirements that have been engineered in such a way and carried out against the law so that the information is legally invalid or contradicts the actual situation. The perpetrator commits the act with the aim of obtaining or using a valid immigration document. But in the process of making it is against the law.

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<sup>16</sup> Tony Mirwanto and Kementerian Hukum, "Alternatif Pendukung Kebijakan Bebas Visa Kunjungan Bagi Wisatawan Asal Tiongkok Di Indonesia," *Ilmiah Kajian Keimigrasian* 2, no. 2 (2019).

### 3.2. Immigration Law Enforcement Against Illegal Foreign Workers Committing Immigration Violations

In terms of Immigration Law Enforcement against business criminals, there are 2 ways, namely the first is Law Enforcement through the court process or Projustitia and the Immigration Administrative Action Process.<sup>17</sup>

#### 3.2.1. Court Process or Projustitia

That in the case in Kendari, Southeast Sulawesi, 1 (one) Chinese citizen on behalf of 'HY' was arrested on March 29, 2016. The person concerned uses a Limited Stay Permit Visa (VITAS: Visa Izin Tinggal Terbatas) and has a Limited Stay Permit Card (KITAS: Kartu Izin Tinggal Terbatas) sponsored by PT. XX in Kendari and served as Quality Control Advisor but the reality in the field is that he works as a secondary gold miner at the Bombana mine in Southeast Sulawesi.

Article 122 letter (a) of Law no. 6 of 2011 concerning Immigration imposed on 'HY' for his actions is classified as an Immigration Crime, namely, any act that violates Immigration regulations in the form of crimes and violations that are punishable by criminal penalties, in accordance with the Directives of Dirjenim Number 7.F-337.IL.02.01 concerning Procedures Method of Investigation of Immigration Crimes in 1995.<sup>18</sup> In this case the Immigration PPNS Class I TPI Kendari conducts an in-depth investigation regarding the case, where the Immigration PPNS conducts an investigation stage in order to find information and evidence, then if all elements have been fulfilled, the investigator will conduct a title case with the Head of the Office and Korwas PPNS. If all the elements are met, the Head of the Office instructs the Immigration PPNS in the Immigration Intelligence and Enforcement Section to carry out an investigation into this case. 6 of 2011 concerning Immigration:

"That is, every foreigner who intentionally abuses or carries out activities that are not in accordance with the intent and purpose of granting a residence permit granted to him shall be subject to a maximum

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<sup>17</sup>Ramacesa Nije Maulana, "The Indonesian E-Government Initiatives: Development Stages Of E-Government In Immigration Law Enforcement," *Jurnal Ilmiah Kajian Keimigrasian* 4, no. 2 (2021), <https://doi.org/10.52617/jikk.v5i2.263>.

<sup>18</sup>Ni Wayan Sri Ertami Damayanti and Ngakan Ketut Dunia, "Pengaturan Kebijakan Bebas Visa Kunjungan Dalam Rangka Meningkatkan Kunjungan Wisatawan Mancanegara Ke Indonesia," *Kertha Negara : Journal Ilmu Hukum*, 2018.

imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)".

The relationship between the legal cases suspected of 'HY' can be described as follows:

- a) That based on the Incident Report: LK/06/III/WASDAKIM/KENDARI On March 29, 2016, an Immigration Crime occurred where the Immigration Crime was committed by a suspect named 'HY' a Chinese citizen.
- b) (Intentionally) That what is meant by "Every Foreigner" can be interpreted as a person who is not an Indonesian citizen who commits an Immigration Crime in the jurisdiction of the Republic of Indonesia with full awareness, mind, health and is able to be legally responsible, so that it is meant in every person Foreigners in this case have been fulfilled, namely the suspect HU YUDONG, a Chinese Passport Holder.
- c) (Which intentionally) That it is true that the suspect 'HY' has a KITAS as a Quality Control Advisor issued by the Central Jakarta Immigration Office with the Sponsor of PT XX who is domiciled in Jakarta and is engaged in the textile sector carrying out gold mining operations or in Tembe Village, Bombana Regency.
- d) (Abusing or carrying out activities that are not in accordance with the intent and purpose of granting a residence permit to him) That it is true that the suspect 'HY' has a KITAS as a Quality Control Advisor sponsored by PT XX which is engaged in textiles carrying out gold mining operations, so that in this case the element abuse or carry out activities that are not in accordance with the intent and purpose of granting a residence permit to him has been fulfilled.

Action *Projustitia* What is done by the Civil Servant Investigator of Immigration (PPNS: *Penyidik Pegawai Negeri Sipil*) at the Class 1 Immigration Office of TPI Kendari is by conducting an investigation of 'HY'. The investigation lasted for 49 days, from April 04, 2016 to May 31, 2016 and the case is now in a decision that has permanent legal force

(inkracht van gewijsde), namely imprisonment for 7 (seven) months and a fine of Rp. 5,000,000.00.<sup>19</sup>

When viewed from the prison decision and the fine in that case, the author is of the opinion that in the court's decision the judge did not really give a sentence that was in accordance with the criminal threat in the case he violated, namely being sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). It can be seen that the court's decision which only gave imprisonment for 7 (seven) months and a fine of Rp. 5,000,000.00 (five million rupiah) is very far from the threat of the predicate sentence. The judge should decide a case based on Article 1 of Law number 48 of 2009 concerning Judicial Power, it states that freedom in exercising judicial authority is not absolute because the task of judges is to uphold law and justice based on Pancasila, so that their decisions reflect the sense of justice of the Indonesian people. submitted by the public prosecutor. The law on judicial power stipulates that judges are free to make decisions, but Article 50 of Law number 48 of 2009 concerning Judicial Powers explains that judges in giving decisions must contain the reasons and the basis for the decision, it must also contain certain articles of the relevant regulations or unwritten legal sources that are used as the basis for adjudicating. so that the decision reflects the sense of justice of the Indonesian people. Judges have an important role in imposing crimes, even though judges examine cases carried out by the Immigration PPNS and indictments submitted by public prosecutors. The law on judicial power stipulates that judges are free to make decisions, but Article 50 of Law number 48 of 2009 concerning Judicial Powers explains that judges in giving decisions must contain the reasons and the basis for the decision, it must also contain certain articles of the relevant regulations or unwritten legal sources that are used as the basis for adjudicating. so that the decision reflects the sense of justice of the Indonesian people. Judges have an important role in imposing crimes, even though judges examine cases carried out by the Immigration PPNS and indictments submitted by public prosecutors. The law on judicial power stipulates that judges are free to make decisions, but Article 50 of Law no. 48 of 2009 concerning Judicial Powers explains that judges in giving decisions must contain the reasons and the basis for the decision, it must

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<sup>19</sup> Ridha Nikmatu Syahada and Muhammad Azzam Alfarizi, "Immigration Civil Service Investigator Authority in Implementing Investigation and Investigation as Law Enforcement Efforts on Immigration Criminal Actions," *Journal of Law and Border Protection* 1, no. 2 (2019), <https://doi.org/10.52617/jlbp.v1i2.173>.

also contain certain articles of the relevant regulations or unwritten legal sources that are used as the basis for adjudicating. although the judge examined the case of the *PPNS* Immigration and the indictment submitted by the public prosecutor. The law on judicial power stipulates that judges are free to make decisions, but Article 50 of Law no. 48 of 2009 concerning Judicial Powers explains that judges in giving decisions must contain the reasons and the basis for the decision, it must also contain certain articles of the relevant regulations or unwritten legal sources that are used as the basis for adjudicating. although the judge examined the case of the *PPNS* Immigration and the indictment submitted by the public prosecutor. The law on judicial power stipulates that judges are free to make decisions, but Article 50 of Law number 48 of 2009 concerning Judicial Powers explains that judges in giving decisions must contain the reasons and the basis for the decision, it must also contain certain articles of the relevant regulations or unwritten legal sources that are used as the basis for adjudicating.<sup>20</sup>

In making a decision, the judge must pay attention to all aspects in it, starting from the need for caution, avoiding as little as possible inaccuracies, both formal and material to the technical skills to make it. A good and perfect judge's decision should be tested with four basic criteria of questions (the four way test) in the form of:<sup>21</sup> 1) "Is my decision correct?"; 2) "Am I honest in making decisions?"; 3) "Fair to the parties concerned?"; and 4) "Is my decision useful?."

With the court's decision which only provides criminal sanctions in the form of imprisonment for 7 (seven) months and a fine of Rp. The 5,000,000 judicial decisions cannot answer the sense of justice of law enforcement officers, because the decision is considered light compared to the criminal sanctions listed in Law Number 6 of 2011 concerning Immigration so that it will not provide a deterrent effect on the suspect, as well as prompt judicial demands. simple and inexpensive is not achieved. The difficulty of the litigation process, the loss of energy, time and cost which ultimately results are not in accordance with what is expected resulting in a lot of energy being wasted by *PPNS*.

According to the author, this is not in accordance with the principles of the Criminal Procedure Code, namely: the principle of fast, simple, and low-

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<sup>20</sup>Sudarto, *Kajian Hukum Pidana Dan Bina Lingkungan Tentang Reformasi Hukum Pidana* (Bandung: Sinar Baru, 1986).

<sup>21</sup>Lilik Mulyadi, *Hal-Hal Mendasar Dalam Penjatuhan Hukuman Oleh Hakim* (Jakarta: Sinar Grafika, 2010).

cost justice, which is stated in Article 4 Paragraph (2) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.

### **3.2.2. Immigration Administrative Action Process**

There were 10 (ten) illegal workers from China arrested on August 14 2018, the ten foreigners from China were in the names of SD, LS, XJ, DY, ZY, HJ, WL, CT, HZ, YM uses visa-free tourist visits and works as a manual laborer at PT. XX which is located at Cileungsi, Bogor. After the minutes of the initial examination have been carried out by the PPNS of the Immigration Office Class I Non TPI Bogor to the suspects and witnesses and sufficient evidence has been obtained, then the actions are classified as Immigration Crimes, namely, any act that violates the Immigration regulations in the form of crimes and violations committed threatened with criminal punishment, in accordance with the Dirjenim Juklak No.7.F-337.IL.02.01 concerning Procedures for Investigation of Immigration Crimes in 1995. Actually, in this case, there are 2 (two) ways to enforce immigration law, namely by projustitia action or Immigration Administrative Action. However, the action taken by the Immigration Office Class I Non TPI Bogor is to carry out Immigration Administrative Actions in the form of deportation and deterrence of 10 foreigners who have been suspected of carrying out activities that are not in accordance with the residence permit granted to them while in Indonesia and also suspected of endangering security and order. public or not respecting or disobeying the laws and regulations as referred to in Article 122 letter (a) jo. Article 75 of Law no. 6 of 2011 concerning Immigration. IL.02.01 concerning Procedures for Investigation of Criminal Acts of Immigration in 1995. Actually, in this case there can be 2 ways of enforcing immigration laws, namely by means of projustitia action or Immigration Administrative Actions. However, the action taken by the Immigration Office Class I Non TPI Bogor is to carry out Immigration Administrative Actions in the form of deportation and deterrence of 10 foreigners who have been suspected of carrying out activities that are not in accordance with the residence permit granted to them while in Indonesia and also suspected of endangering security and order public or not respecting or disobeying the laws and regulations as referred to in Article 122 letter (a) jo. Article 75 of Law no. 6 of 2011 concerning Immigration. IL.02.01 concerning Procedures for Investigation of Criminal Acts of Immigration in 1995. Actually, in this case there can be 2 ways of enforcing immigration laws, namely by means of projustitia action or Immigration Administrative Actions. However, the action taken

by the Immigration Office Class I Non TPI Bogor is to carry out Immigration Administrative Actions in the form of deportation and deterrence of 10 foreigners who have been suspected of carrying out activities that are not in accordance with the residence permit granted to them while in Indonesia and also suspected of endangering security and order public or not respecting or disobeying the laws and regulations as referred to in Article 122 letter (a) jo. Article 75 of Law no. 6 of 2011 concerning Immigration, IL.02.01., concerning Procedures for Investigation of Criminal Acts of Immigration in 1995.

Based on interviews conducted by the author with the Head of the Immigration Enforcement Subsection, Mr. AR. Yoga Mahardhika Lamarauna that in determining the decision whether a case is carried out by Projustitia Immigration Law Enforcement or by Immigration Administrative Actions, it is the Head of the Office as the decision maker by considering various aspects. Mr. Yoga added that in order to run effectively and efficiently, in this case an Immigration Administrative Action process was carried out in the form of deportation and deterrence of 10 foreigners. The facts that occur in the field because the judge's decisions are always light compared to the criminal sanctions listed in Law Number 6 of 2011 concerning Immigration, making judicial demands that should be fast, simple and cheap is something that is difficult to achieve. In addition, the difficulty of the litigation process, loss of energy, time and cost which ultimately results are not in accordance with what is expected resulting in a lot of wasted energy, the most and the best choice is the Immigration Administrative Action, it can be seen from the Immigration Law Enforcement in 2019, there are as many as 108 cases were carried out through the Projustitia process and there were 11,769 cases carried out through the Immigration Administrative Action process.

Following is the process of Immigration Administrative Actions carried out by the Immigration Office Class I Non TPI Bogor in accordance with Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration:

- a. 10 (ten) illegal workers from China who violate the Immigration Law must ensure that the person concerned violates the applicable laws or violates the provisions of the Immigration Law.

- b. The Administrative Process, namely PPNS will make a Minutes of Detention and conduct an Investigation Report related to the article violated on August 14, 2018. After completion of the Minutes of Detention and Investigation Reports on 10 (ten) illegal workers from China then Tinkin (Administrative Actions) is made Detention) in the form of maximum detention for 30 days in the Detention Room.
- c. 10 (ten) illegal workers from China were put into the Detention Room of the Class I Non TPI Immigration Office in Bogor and detained for 1 day.
- d. The passports of 10 (ten) illegal workers from China are checked whether they are still valid, if the passports are no longer valid, the embassy will ask for a temporary passport from which the foreigner came from.
- e. Registration at the Status kim Section After these two elements are fulfilled, registration is carried out at the Status kim with the following stages:
  - 1) Verifying the identity of a Foreigner;
  - 2) Carry out self-examination of foreigners, if there are goods that are considered dangerous, then the Immigration Intelligence and Enforcement officers are allowed to confiscate the goods.
  - 3) Perform data input, which is divided into two, namely: manual registration and electronic registration, then after that the registration number is issued, then fingerprints and facial photos are taken which will be registered in the block list (prevent). Registration is done to get a number that is used for single use (Exit Permit Only), which will later be included in the passport.
- f. On August 15, 2018, Immigration officers deported 10 (ten) illegal workers from China and the responsibility of the Class I Non TPI Bogor Immigration Office ended only until the Foreigner left Indonesian territory.

According to the author, after the author conducted this research, there were positive and negative sides in the Immigration Administrative Action process, namely for the positive side, immigration administrative actions were more practical and did not need to spend a lot of time and did not need to spend a lot of money, such as expelling people and not being allowed to enter Indonesia again. continue to go through the process of

Law Number 6 of 2011, while the negative side is that foreigners do not feel the deterrent effect as if they can repeat the mistake. If viewed from the negative side, which makes foreigners not feel the deterrent effect and can repeat their mistakes, it is proven, namely based on the data that has presented, namely until now the number of business crime cases related to immigration committed by illegal foreign workers is increasing.

#### **4. Conclusion**

Based on the results of the research above, conclusions can be drawn as follows:

- 4.1. There are two types of Business Crimes committed by Illegal Foreign Workers related to Immigration violations, namely: Misuse of residence permits and Providing false letters or data or incorrect information to obtain Visa or Stay Permits. That due to business crimes committed by illegal foreign workers, it is detrimental to the Indonesian government because foreign workers working in Indonesia are subject to income tax in Indonesia in accordance with the provisions of Law Number 36 of 2008 concerning Income Tax (hereinafter referred to as Law No. 36/2008 so that their rights and obligations in the field of taxation applies, if the foreign worker works illegally in Indonesia, the illegal foreign worker does not pay taxes and does not pay PNBPN (interpreted with *Penerimaan Negara Bukan Pajak*) to the government.
- 4.2. Immigration law enforcement against illegal foreign workers who commit business crimes related to immigration violations in Indonesia is carried out in accordance with the provisions of Law number 6 of 2011 concerning Immigration, namely through the court process or *projustitia* and Immigration administrative actions. In the process of prosecution or prosecution, the sanctions given to illegal foreign workers are threats and fines in the form of being sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)". Meanwhile, in the Immigration Administrative Action process, the sanctions given to illegal foreign workers who commit business crimes related to immigration violations are by paying fees or fines, deportation and deterrence. With the findings in the field that the judge's decision is considered light compared to the criminal sanctions listed in Law no. 6 of 2011 concerning Immigration so that it does not provide a

deterrent effect on suspects, and the failure to achieve justice which should be fast, simple and cheap as well as the difficulty of the litigation process, loss of energy, time and cost for PPNS which ultimately results are not in accordance with what is expected, makes the Immigration party take more decisions to carry out Immigration Administrative Actions rather than Projustitia Actions.

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