
Law Enforcement Against Foreign Nationals with Expired Travel Documents and Residence Permits

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Abstract

Increased global mobility poses complex challenges for Indonesia, particularly in the management of foreign nationals (WNA) whose travel documents have expired. This research analyses the law enforcement process against foreigners whose travel documents and residence permits have expired, with a focus on the case study of the Cianjur District Court Decision Number 303/Pid.Sus/2023/PN Cjr. The research method used is normative juridical, which examines laws and regulations related to immigration and the implementation of immigration criminal investigations. The results showed that the Immigration Office Class III Non TPI Cianjur performs the function of supervision and enforcement of immigration law properly, as stipulated in Law Number 6 Year 2011 on Immigration. The case of a Nigerian foreigner, Oluchukwu Basil Ezebuo, who used an expired travel document and residence permit, became a concrete illustration of how the investigation and prosecution procedures were carried out. Enforcement involves administrative checks, seizures, and prosecution up to court hearings. The judge's verdict imposing a one-year imprisonment and a fine of five million rupiah on the defendant was considered to have fulfilled the principles of justice and legal certainty. This research concludes that strict law enforcement is needed to maintain state sovereignty and prevent the misuse of immigration documents by foreigners.

INTRODUCTION

The increasing mobility of the world's population due to globalisation has a complex impact on Indonesia. The impact, both beneficial and detrimental, requires a strong legal framework in regulating the movement of foreign nationals in and out of the country's territory. Law No. 6 Year 2011 on Immigration was enacted in response to this need (Nugroho, 2022).

As stipulated in Law Number 6 Year 2011, Immigration covers all activities related to the movement of foreign nationals in and out of the country as well as the supervision of the presence of foreign nationals in Indonesia. In order to maintain the sovereignty of the state and uphold human rights, the Immigration Law regulates that the process of entry of foreign nationals into Indonesian territory is carried out selectively. Every foreign national who has obtained a residence permit is required to comply with the applicable provisions and may not deviate from the original purpose of his/her arrival (Zahro, 2023).

The principle of selectivity in immigration requires an evaluation of the benefits that can be provided by foreign nationals. In addition, aspects of security and order are the main considerations. Furthermore, the activities of foreign nationals must be in line with national

values and interests. In practice, this selective policy involves a balance between security and welfare approaches, which makes the immigration agency an entity with a multifunctional role (Syahrin, 2019).

Immigration agencies in Indonesia not only play a role in managing the movement of people in and out of the country, but also bear great responsibility in preventing and combating transnational crime. In its implementation, immigration officers often face challenges such as counterfeiting of travel documents, including passports, visas, and residence permits committed by international crime networks (Ambat & Sulistyowati, 2022). This confirms that immigration institutions have a strategic role in maintaining state security and protecting the public from the threat of cross-border crime (Rahmat, 2020).

Immigration control is a series of activities carried out comprehensively against foreign nationals, starting from the pre-arrival to post-departure stage. This supervision activity includes checking travel documents, verifying residence permits, and monitoring activities. If there are indications of violations of immigration regulations, further intensive supervision will be carried out (Setiawati, 2015).

Misuse of immigration documents by foreign nationals, such as working without a permit or exceeding the prescribed period of stay, is a serious problem that can harm the country. To protect the rights of Indonesian workers and maintain the country's economic stability and security, the government needs to implement stricter immigration policies. Foreign nationals who wish to work in Indonesia must meet all applicable requirements and have skills that match the needs of the labour market (Muhlisa & Roisah, 2020).

The country where foreign nationals are located not only has an obligation to ensure their interests and security, but also must supervise foreign nationals in its territory. (Hamidi & Christian, 2021). Immigration control is an important instrument to ensure compliance with immigration laws and regulations by all parties, especially foreign nationals, both when entering the country's territory and while in it (Andria et al., 2021).

The strategic location of supervision can be seen from the definition of immigration. Based on the meaning of immigration, what must be done is supervision. This supervision is carried out to ensure that the country's sovereignty is maintained (Suhaidi et al., 2016). Immigration supervision includes immigration law enforcement, both administrative and related to immigration crimes. As a consequence, special arrangements are required regarding the Immigration PPNS who perform their duties and authorities in accordance with Law Number 6 Year 2011 on Immigration (Fudin et al., 2024).

Immigration offences are special criminal offences, so the formal and material laws governing them are different from general criminal law. In formal law, immigration offences are regulated by laws that specifically regulate immigration issues, such as Law Number 6 Year 2011 on Immigration, which includes law enforcement procedures and procedures for investigation that are different from general criminal law. In addition, the material law governing immigration criminal offences includes more specific provisions and highlights immigration-related offences, such as violations of residence permits, misuse of visas, or other illegal acts committed by foreign nationals. One of the differences with general criminal offences is the presence of specific minimum criminal provisions, which stipulate harsher minimum penalties than general criminal offences, in order to provide a greater deterrent effect

in relation to immigration offences. For example, Article 116 states that certain offences, such as entering or staying in Indonesia without a permit, are punishable by imprisonment for a minimum of 5 years and a maximum of 15 years. This provision shows that immigration law provides stricter sanctions for offences in the field of immigration compared to general criminal law, which usually does not have specific minimum criminal provisions (Suwesty, 2020).

In 2023 in Cianjur Regency, there was a case of immigration crime involving a foreign national. This case was tried at the Cianjur District Court with Decision Number 303/Pid.Sus/2023/PN Cjr. The case involved a Nigerian national named Oluchukwu Basil Ezebuo, who was charged for using travel documents and residence permits that had expired. This prompted immigration officials to take legal action, which led to the submission of the case to the court.

Based on this background, the author decided to conduct research with the title "Law Enforcement Against Foreign Citizens whose Travel Documents and Stay Permits Have Expired (Study of Decision No. 303/Pid.Sus/2023/PN Cjr)." This research will discuss three main issues. First, how is the law enforcement process carried out by the Immigration Office Class III Non TPI Cianjur in handling cases of foreign nationals in Indonesia who have travel documents and residence permits that have expired. Second, what are the factors that cause the presence of foreign nationals in Indonesia even though their documents are no longer valid. Third, what steps are taken to resolve cases of foreign nationals with expired documents. The purpose of this research is to provide a thorough understanding of law enforcement mechanisms, identify the causes of violations, as well as formulate effective measures to deal with similar cases in the future.

METHODOLOGY

This research adopts a normative juridical approach to analyse criminal liability for foreign nationals who violate immigration provisions by not having valid travel documents and residence permits in Indonesian territory. This type of research is qualitative with a normative juridical approach, which is conducted by examining how laws and regulations regulate immigration law enforcement through the investigation process of immigration crimes. The data sources used include primary data and secondary data, which are collected through literature study and document study. The data obtained is then processed through the process of selection, classification, and systematisation, then presented in the form of interpreted descriptions to be analysed qualitatively, before finally drawing conclusions.

RESULTS AND DISCUSSION

1. Law Enforcement by the Immigration Office Class III Non TPI Cianjur in Resolving Cases of Foreign Citizens in Indonesia with Expired Travel Documents and Residence Permits

The implementation of immigration law enforcement, especially against foreign nationals whose travel documents and residence permits have expired, is based on the mandate of Law Number 6 Year 2011 on Immigration Article 1 Paragraph 3. The main tasks and

functions of immigration include the Immigration Service Function, Law Enforcement Function, State Security Function, and the Community Welfare Development Facilitator Function. In this context, what is meant is the Law Enforcement Function (Widiyanti, 2022).

In carrying out its duties, immigration ensures that everyone who is in Indonesian territory complies with immigration regulations without exception. This law enforcement can be done in two ways. First, through the judicial process to deal with offences that are criminal in nature. Second, through administrative actions taken directly by immigration officers without going through a trial process, for offences that are administrative in nature only (Taekedangan et al., 2023).

Law enforcement against foreign nationals whose travel documents and residence permits have expired in the working area of the Class III Non TPI Cianjur Immigration Office is closely related to the supervision and enforcement functions of immigration law carried out by the immigration office. This is part of the authority of the Immigration Office in carrying out its duties. The supervisory function plays an important role in monitoring and ensuring that every foreign national in Indonesian territory complies with immigration rules, including the provisions of the validity period of travel documents and residence permits. Through this supervisory activity, the immigration office can detect violations, such as the use of expired documents or misuse of residence permits. On the other hand, law enforcement aims to take strict action against violations found, either through investigation, detention, or expulsion of foreign nationals who do not comply with regulations. With a combination of strict supervision and consistent law enforcement, immigration offices can maintain immigration order, protect national security, and prevent abuse of residence permits by foreign nationals.

For example, the case of a Nigerian citizen named Oluchukwu Basil Ezebuo in Cianjur shows how immigration control is conducted by officers of the Cianjur Class III Non TPI Immigration Office. While conducting surveillance in the Cipanas area, officers found that Oluchukwu Basil Ezebuo's passport and residence permit had expired. After admitting this, he was then brought to the Class III Non TPI Cianjur Immigration Office for follow-up.

The results of the administrative examination by the Civil Servant Investigator (PPNS) at the Cianjur Class III Non TPI Immigration Office showed that Oluchukwu Basil Ezebuo was proven to have violated Article 119 paragraph (1) of Law Number 6 Year 2011 on Immigration. This article states that any foreigner who is in the territory of Indonesia without a valid travel document and visa, as stipulated in Article 8, is subject to imprisonment of up to five years and a maximum fine of IDR 500,000,000. After being found in violation, Oluchukwu Basil Ezebuo was then processed through an immigration investigation.

The following is the flow of investigation conducted by Civil Servant Investigators (PPNS) at the Immigration Office Class III Non TPI Cianjur related to the Investigation of Immigration Crimes committed by Suspect Oluchukwu Basil Ezebuo:

- a. An Investigation Order, Task Order, and Notice of Commencement of Investigation (SPDP) were issued, which were then handed over to the Cianjur District Attorney's Office;
- b. Examination of Witnesses, Experts, and Suspects;
- c. Arrest warrant;
- d. Detention Order

After the issuance of this warrant, the suspect is detained at Class IIB Cianjur Correctional Facility.

- e. Seizure Warrant;
- f. Filing of case files;
- g. Delivery of case files to the prosecutor: After the Investigator completes the preparation of the Case File, the file is then sent to the Public Prosecutor (JPU) at the Cianjur District Attorney's Office;
- h. The case file has been declared P-21: The Cianjur District Attorney's Office then issued a notification letter on the results of the investigation of a criminal case on behalf of the suspect Oluchukwu Basil Ezebuo who is suspected of violating Article 119 paragraph (1) of Law No. 6 of 2011 concerning Immigration is complete (P21) as referred to in the Letter of the Head of the Cianjur District Attorney's Office Number: B-2255/M.2.27/Eku.1/10/2023 dated 5 October 2023;
- i. Submission of Suspects and Evidence to the Public Prosecutor: Submission of Suspects and Evidence from Civil Servant Investigators of the Cianjur Class III Non TPI Immigration Office to the Public Prosecutor (JPU) of the Cianjur District Attorney's Office after the Case File is declared complete (P21). Furthermore, the prosecution was carried out by the Public Prosecutor of the Cianjur District Prosecutor's Office, and during the prosecution the Public Prosecutor detained the suspect at the Cianjur Class II B Correctional Facility;
- j. Trial at the Cianjur District Court: The trial of the Defendant was conducted at the Cianjur District Court, During the trial process, the Defendant remained detained at the Cianjur Class II B Correctional Facility;
- k. Decision of the Cianjur District Court: As for the verdict number: 303/Pid.Sus/2023/PN Cjr handed down by the Panel of Judges of the Cianjur District Court to the Defendant, namely "Sentencing the Defendant therefore to imprisonment for 1 (one) year and a fine of Rp 5,000,000.00, - (five million rupiah) provided that if he does not pay the fine, it will be replaced with imprisonment for 1 (one) month.";
- l. Furthermore, the Cianjur District Attorney's Office implemented the decision of the Panel of Judges of the Cianjur District Court, namely the Defendant was imprisoned in Class IIB Cianjur Correctional Facility.

Analysis of Judges' Considerations in Decision Number: 303/Pid.Sus/2023/PN Cjr. The legal analysis to be discussed by the author relates to a special criminal case. This case involves an immigration crime committed by a foreign national related to the use of unauthorised documents and visas or illegal entry into Indonesian territory. As for the results of the examination of the suspect, the facts were obtained that: The Defendant knew that he could stay in Indonesia (Stay Permit) with the Visit Visa, namely the Defendant could stay for 30 (thirty) days in Indonesia; the Defendant was informed by the Defendant's agent before leaving for Indonesia; the Defendant could extend his visa or stay permit at the Immigration Office in Indonesia; the Defendant never extended his Stay Permit or reported his presence at the Immigration Office in the Indonesian Territory; the Defendant knew that the Defendant's Nigerian Passport Number A08670468 was valid until 11 October 2022; The Defendant never went to the Nigerian Embassy in Indonesia to extend the validity of the passport; The

Defendant never extended the national passport because he knew that the validity period of the Defendant's visa or residence permit had expired, so he was afraid to extend the visa or residence permit. The Defendant did not have enough money to extend the visa or residence permit; The Defendant knew that the Defendant's passport and residence permit were no longer valid; The purpose of the Defendant's arrival in Indonesia was for business purposes; The Defendant was in Indonesia since 2019; The Defendant was a first-time visitor to Indonesia; The Defendant knew that the Defendant was mistaken (Pratiwi, 2021).

The Judge's consideration in Decision Number: 303/Pid.Sus/2023/PN Cjr was based on several points related to the above case. Firstly, the judge considered that the defendant, through his interpreter, had understood the charges of the Public Prosecutor and chose not to file an objection or exception to the charges. Secondly, the judge noted that the defendant, through his interpreter, also stated that he would not present any mitigating witnesses (a de charge) at the trial.

Furthermore, the judge considered that all elements of Article 119 paragraph (1) of Law of the Republic of Indonesia Number 6 Year 2011 on Immigration had been fulfilled, so the defendant must be declared legally and convincingly proven to have committed a criminal offence in accordance with the single charge of the Public Prosecutor. The judge also emphasised that because the defendant had been proven legally, and based on the panel of judges' belief that the defendant was guilty, the defendant must be sentenced to a punishment commensurate with his actions.

In addition, the judge considered that during the examination at trial, no justification or excuse was found that could erase the defendant's guilt, so the defendant must be sentenced in accordance with his actions. Finally, the judge considered the aggravating and mitigating circumstances of the defendant before passing sentence. The aggravating circumstances were that the defendant's actions could cause unrest in the community, while the mitigating circumstances were that the defendant had never been convicted, admitted his guilt, regretted his actions, and promised not to repeat his actions.

The judge's consideration is the main basis for giving a decision in a case. Before making a decision, the judge must consider all important aspects of the trial. This includes paying attention to the requirements that must be met in order to criminalise a person, both subjective and objective requirements. Therefore, judges must be careful in deciding a case, by considering the various results of the trial that have taken place to understand the testimony of the defendant. When making a decision, the judge must also pay attention to several conditions, namely: juridical requirements, public prosecutor's indictment, criminal charges, witness testimony, defendant's testimony, evidence, articles in the Criminal Code, and non-juridical considerations.

In the verdict on the case, based on the judge's consideration, it was stated that the defendant Oluchukwu Basil Ezebuo was legally and convincingly proven guilty of committing the crime of "Entering and/or being in the territory of Indonesia without having a valid Travel Document and Visa," in accordance with the single charge of the Public Prosecutor. The judge's verdict is considered appropriate when viewed based on the considerations made by the judge in deciding the case.

Through these court judgements, legal certainty is achieved as there is a clear decision regarding the culpability of the offender and the sanction given. This helps enforce legal norms and provides a concrete example of how offences are dealt with. In addition, strict court judgements can serve as a warning to other foreigners to comply with immigration rules. This deterrent effect can help reduce the number of similar offences in the future.

The Immigration Administrative Action (AOA) against Oluchukwu Basil Ezebuo refers to the sanctions given to foreign nationals who violate immigration regulations and other laws, in accordance with Law Number 6 Year 2011 on Immigration. The law stipulates two types of sanctions, namely administrative and criminal sanctions. Administrative sanctions include various actions such as inclusion in the prevention or deterrence list, restriction or cancellation of residence permit, prohibition to be in a certain place in the territory of Indonesia, obligation to stay in a certain place, imposition of burden fees, and/or deportation from the territory of Indonesia. Meanwhile, criminal sanctions include imprisonment and/or fines as stipulated in Article 113 to Article 136 of the law.

After the defendant completes his sentence from the Cianjur District Court, Oluchukwu Basil Ezebuo, a Nigerian national, will be handed over to the Cianjur Class III Non TPI Immigration Office. Furthermore, he will be subject to Immigration Administrative Action in the form of deportation back to his home country, Nigeria. This deportation is part of the immigration law enforcement efforts to maintain the sovereignty of the Unitary State of the Republic of Indonesia.

2. Causes of the Presence of Foreign Nationals in Indonesia with Expired Travel Documents and Residence Permits

In carrying out its duties related to immigration law enforcement in the working area of Class III Non TPI Cianjur Immigration Office, there are several factors that cause the presence of foreign nationals in Indonesia with expired travel documents and residence permits. These causative factors include:

- a. Foreign Nationals never extend their national passport to their Embassy because they know that their residence permit has expired, so they are afraid to extend their passport. In this case, the suspect Oluchukwu Basil Ezebuo already knew that his passport and residence permit had expired, but because he was afraid of being caught by immigration officers and there were problems, so the suspect remained and lived in a rented house and moved around;
- b. Foreign Nationals initially come to Indonesia with the intention of seeking business opportunities, but the business they run fails. As a result, the foreign national did not have enough money to return to his/her home country, so his/her residence permit expired (overstay). In this case, the defendant Oluchukwu Basil Ezebuo entered Indonesia legally with a valid passport and residence permit to do a clothing business. However, as his business failed, he did not have sufficient funds to return to his country, so his passport and residence permit overstayed, and he remained in Indonesia;
- c. Foreign nationals realise that their presence in Indonesia with expired travel documents and residence permits (overstay) is against immigration law. As a result, they live on the move to avoid immigration officers, because if caught, they will be deported. In this

case, the defendant Oluchukwu Basil Ezebuo was aware that the overstay of his travel document/passport and residence permit was a violation of immigration law. Therefore, he lived by moving from Jakarta to Bogor and then to Cianjur to avoid immigration officers.

In carrying out immigration law enforcement, Class III Non TPI Cianjur Immigration Office faces a number of cases of foreign nationals living in Indonesia with expired documents. Some of the contributing factors include the fear of foreign nationals to extend their passport or residence permit for fear of arrest, financial difficulties due to business failure resulting in the inability to return to their country of origin, as well as efforts to avoid detection by changing residence to avoid deportation. An example of a case identified is Suspect Oluchukwu Basil Ezebuo, who entered Indonesia with official documents for business purposes. However, business failure resulted in his inability to renew his permit, forcing him to return to his country, so he was forced to stay in Indonesia by moving from one region to another to avoid immigration officers.

3. Measures Taken to Address the Causes of the Presence of Foreign Nationals in Indonesia With Expired Travel Documents and Residence Permits

As a first step, in addressing the causes of foreign nationals in Indonesia whose travel documents and residence permits have expired. Immigration officers can conduct an investigation, which serves as a preventive measure as well as an early prevention effort to identify violations of the law, especially related to violations of the Immigration Act. Article 104 of the Immigration Law explains that investigations into immigration offences must be based on the Criminal Procedure Code (KUHAP) as *Lex Generalis*, while the provisions of immigration law act as *Lex Specialis* to strengthen law enforcement in the field of immigration (Fudin et al., 2024).

In the context of handling foreign nationals whose travel documents and residence permits have expired, the author's analysis points to the need to implement strategic measures in line with this investigation procedure. These measures aim to ensure that any offences are properly identified and followed up in accordance with the applicable regulations. The steps are as follows:

- a. Coordinate with the Directorate General of Immigration, namely at the Directorate of Immigration Cooperation to be forwarded to the Director of Consular Affairs, Ministry of Foreign Affairs in order to coordinate the application for Travel Documents and also facilitate the return of foreign nationals to their home countries;
- b. The Intelligence and Enforcement Officer (Inteldakim) at the Immigration Office conducts comprehensive immigration surveillance in its working area either through Independent Surveillance Operations, Immigration Intelligence Operations, or Joint Operations by collaborating with Members of the Foreign Citizen Monitoring Team (Timpora) both at the Regency and District levels related to the presence and activities of Foreign Citizens, by applying the principle of "Selective Policy", namely only Foreign Citizens who are beneficial and do not disturb order or violate laws and regulations. The function of Timpora is important in terms of coordination and exchange of data and information as well as the collection of information and data on

the presence of Foreign Citizens in stages from the village or sub-district level to the province, so as to detect and early prevent the presence of Foreign Citizens in the midst of society who are suspected of committing immigration violations, namely staying in Indonesia with Travel Documents and Stay Permits that have expired or expired;

- c. That in the context of immigration law enforcement and in order to meet the performance targets of the Immigration Intelligence and Enforcement Division/Section/Subsection, from the results of a comprehensive examination of foreign nationals who commit alleged immigration violations, in Law Number 6 Year 2011 on Immigration, there are 2 (two) types of sanctions, namely administrative sanctions and criminal sanctions. Administrative sanctions are Immigration Administrative Measures in the form of immigration administrative measures which include inclusion in the list of prevention or deterrence; restriction, change, or cancellation of Stay Permit; prohibition to be in one or several certain places in the Indonesian Territory; the obligation to reside in a certain place in the Indonesian Territory; imposition of burden fees; and/or deportation from the Indonesian Territory. Meanwhile, criminal sanctions in the form of imprisonment and/or fines are regulated in Article 113 to Article 136 of Law Number 6 Year 2011 on Immigration.

In practice, these measures support the achievement of the performance targets of the Immigration Intelligence and Enforcement Division, and strengthen the government's efforts to maintain the security and sovereignty of the country. These measures reflect a coordinated and proactive approach in dealing with foreigners with expired travel documents, and are crucial elements in the enforcement of immigration law in Indonesia.

CONCLUSION AND SUGGESTION

Immigration Civil Servant Investigators (PPNS) at the Immigration Office Class III Non TPI Cianjur successfully enforced immigration law by investigating immigration crimes (Pro Justitia) against a Nigerian citizen named Oluchukwu Basil Ezebuo. Based on the decision of the Panel of Judges of the Cianjur District Court Number: 303/Pid.Sus/2023/PN Cjr, the Defendant Oluchukwu Basil Ezebuo was found legally and convincingly guilty of entering and/or being in the territory of Indonesia without having a valid Travel Document and Visa, in accordance with Article 119 paragraph (1) of Law Number 6 of 2011 concerning Immigration. From the author's analysis, the judge's verdict is considered appropriate when viewed from the considerations used by the judge in deciding the case. Through this court decision, legal certainty is achieved because there is a clear decision regarding the guilt of the perpetrator and the sanctions given. This helps to uphold legal norms and provide concrete examples of how offences are dealt with. In addition, strict court judgements can serve as a warning to other foreign nationals to comply with immigration rules. This deterrent effect is expected to reduce the number of similar offences in the future.

Some of the causes of the presence of foreign nationals in Indonesia with travel documents and residence permits that have expired include: (1) Foreign Nationals do not extend their passports at their embassies because they know their residence permit has expired, so they are afraid to extend their passports; (2) Foreign Nationals come to Indonesia with the

aim of seeking business opportunities, but the business fails, so they do not have enough money to return to their country, causing their Residence Permit to overstay; (3) Foreign nationals are aware that their presence in Indonesia with expired Travel Documents and Stay Permits (overstay) is a violation of immigration law, so they choose to live in a mobile manner from one place to another to avoid Immigration officers, because if caught, they will be deported.

Measures taken to address the presence of foreign nationals in Indonesia with travel documents and residence permits that have expired, among others: (1) Coordinate with the Directorate of Immigration Cooperation, Directorate General of Immigration, which is forwarded to the Director of Consular Affairs, Ministry of Foreign Affairs to arrange for the application of Travel Documents and facilitate the return of foreign nationals to their home countries; (2) Intelligence and Enforcement Officers (Inteldakim) at the Immigration Office conduct comprehensive immigration surveillance in their working areas by cooperating with members of the Foreign Citizen Monitoring Team (Timpora) from the District to Sub-district levels related to the presence and activities of foreign nationals; (3) In order to enforce immigration law and fulfil the performance targets of the Immigration Intelligence and Enforcement Division/Section/Subsection, from the results of the examination of foreign nationals suspected of committing immigration offences, there are two types of sanctions in accordance with Law Number 6 Year 2011 on Immigration, namely administrative sanctions and criminal sanctions.

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