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## **Authority of the state police of the republic of Indonesia in conducting supervision, security and action against foreigners in Indonesia**

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**Abstract.** Globalization supported by advances in transformation technology has encouraged the mobility of the world's population to visit other countries in turn. In the destination country, these people are known as foreigners. The mobility of these foreigners is motivated by various reasons, such as business, research, tourism, study, and various other reasons. Indonesia is one of the countries involved in the global chessboard, of course it must be ready for the various consequences that arise, especially related to the entry and exit of foreigners in the territory of Indonesia. The authority of the Police in supervising, securing, and taking action against foreigners in Indonesia has fluctuated between being present and non-existent, resulting in legal uncertainty regarding involvement the Police. Theoretically, the regulation of authority the Police in supervising, securing, and taking action against foreigners in Indonesia, there is a dissynchronization between the 2011 Immigration Law and the 1945 Constitution of Republic Indonesia and its implementing regulations, as well as disharmony between the 2011 Immigration Law and the Police Law, and the Criminal Procedure Code, so that in its implementation it results in apathy or passivity in supervising, securing, and taking action against foreigners in Indonesia.

**Keywords.** authority; foreigners; state

### **Introduction**

Globalization supported by advances in transformation technology has encouraged the mobility of the world's population to visit other countries in turn.[1] In the destination country, these people are known as foreigners. The mobility of these foreigners is motivated by various reasons, such as business, research, tourism, study, and various other reasons.[2] Indonesia is one of the countries involved in the global chessboard, of course it must be ready for the various consequences that arise, especially related to the entry and exit of foreigners in the territory of Indonesia. Concerns about the negative impacts of the entry of foreigners in Indonesia, related to the possibility of violations of immigration laws, and especially criminal acts committed by foreigners in Indonesia. These concerns are increasingly real in connection with several policies of the Indonesian government related to the exit and entry, as well as foreigners in Indonesia. These policies include the visa-free visit policy that was implemented for 169 countries in 2016

through Presidential Regulation (Perpres) Number 21 of 2016 concerning Visa-Free Visits. The visa-free policy will open the country's gates wider for the entry and exit of foreigners in Indonesia.

The visa-free policy also has the potential to increase transnational crimes, whether committed individually or in an organized manner, such as *smuggling, human trafficking, theft of natural resources, theft of patents, money laundering, cybercrime, document forgery and drug trafficking, narcotics crimes, banking crimes, gambling crimes, and several other types of crimes.*[3]

To prevent and overcome the possibility of violations of the law by foreigners, supervision, security, and action must be carried out against foreigners in the territory of Indonesia. In addition, it is necessary to increase and tighten supervision of the activities of foreigners in Indonesia in a coordinated manner by involving each related agency in addition to involving the wider community. Such supervision, security, and action can be carried out by Immigration and the Indonesian National Police, in accordance with their respective authorities..

The authority to supervise, secure, and take action against foreigners is carried out based on Law Number 2 of 2002 concerning the Police (Police Law), Law Number 6 of 2011 concerning Immigration (Immigration Law 2011), and Regulation of the Minister of Law and Human Rights Number 50 of 2016 concerning the Foreigner Supervision Team (PERMENKUMHAM Supervision of Foreigners). At the implementation level, several laws and regulations governing supervision, security, and action against foreigners in Indonesia indicate problems that must be resolved immediately. In this case, there is reluctance or passivity on the part of the Police in supervising, securing, and taking action against foreigners in Indonesia. Meanwhile, Immigration is unable to supervise, secure, and take action against foreigners in Indonesia.

### **Research Method**

This research is a normative research.[4]

### **Discussion**

Realizing order and security as a form of legal protection for the community is a constitutional obligation of the state.[5] This obligation is implied in the Fourth Paragraph of the Opening of the 1945 Constitution, which is formulated: "protecting all Indonesian people and all Indonesian blood...". This protection must be interpreted in a broad sense that includes protecting the community from all forms of threats both from within and from outside the country, including threats of disturbances to security and order from foreigners in Indonesia. The obligation to provide this legal protection is constitutionally mandated to the Police through Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which is formulated: "The Republic of Indonesia National Police, as a state apparatus that maintains public security and order, is tasked with protecting, serving, and enforcing the law.

The mandate of Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia was then realized through Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. In the chapter considering point b of the law it is formulated: "maintaining domestic security through efforts to organize police functions which include maintaining public security and order, law enforcement, protection, patronage, and service to the community is carried out by the National Police of the Republic of Indonesia as a state apparatus assisted by the community by upholding human rights". Furthermore, in Article 2

concerning the maintenance of domestic security is the responsibility of the police and Article 13 concerning the main duties of the police determines that: "The function of the police is one of the functions of the state government in the field of maintaining public security and order, law enforcement, protection, patronage, and service to the community".[6]

The police function stated in Article 2 of Police Law also interpretatively includes the function of supervision, security, and enforcement against foreigners. In carrying out these functions, the Police formed a Foreigner Surveillance Team (POA Team) throughout Indonesia, from the central level, provincial level, to the district/city level. At the time of the enactment of Law Number 9 of 1992 concerning Immigration (Immigration Law 1992), the function of supervision, security, and enforcement against foreigners was carried out together with Immigration.

In 2011, Law Number 6 of 2011 concerning Immigration (2011 Immigration Law) was formed and enforced, replacing the 1992 Immigration Law, and this law aims to uphold state sovereignty.

If we pay attention to 2011 Immigration Law, interpretatively it has eliminated the authority of Police in supervising, securing, and taking action against foreigners in territory of Indonesia, so that the Police no longer have authority. The elimination of Police's authority based on 2011 Immigration Law has resulted in the Police being passive in carrying out the function of supervising, securing, and taking action against foreigners in Indonesia. The Police only wait for coordination from Immigration, and do not take the initiative to supervise, secure, and take action against foreigners in Indonesia. The elimination of Police's authority in supervising, securing, and taking action against foreigners in the territory of Indonesia is emphasized in Regulation of Minister Law and Human Rights (PERMENKUMHAM) Number 50 of 2016 Concerning Supervision of Foreigners.

The elimination of the Police's authority is reflected in the provisions of Article 5 paragraph (2) of the Regulation of the Minister of Law and Human Rights Number 50 of 2016 concerning the Foreigner Supervisory Team, which is formulated in full: "The central level Pora Team as referred to in paragraph (1) is chaired by the Director of Immigration Supervision and Enforcement, Directorate General of Immigration, Ministry of Law and Human Rights. The provisions of this article do not mention Police at all as members the supervision of foreigners who are in territory of Republic Indonesia.

The enactment of the 2011 Immigration Law in conjunction with the Regulation of the Minister of Law and Human Rights (PERMENKUMHAM) on Supervision of Foreigners, indicates a disharmony between the authority of the Police and the authority of Immigration which are based on different laws and regulations. In fact, not only has there been a takeover of the authority of supervision, security, and enforcement from the Police by Immigration, but there has also been a dissynchronization and disharmony between the 2011 Immigration Law and the 1945 Constitution of Republic Indonesia, and between the 2011 Immigration Law and the Law on the National Police of the Republic of Indonesia.

The disharmony of the authority of supervision, security, and action that has occurred since the enactment of the 2011 Immigration Law has resulted in the elimination of the Police's attribution authority over foreigners who commit violations or crimes in Indonesia. This authority is in order to carry out supervision, security, and action against foreigners who violate norms or public order and who commit crimes in the territory of the Republic of Indonesia. The elimination of authority the Police Investigator is a form amputation of the authority Police Investigator over foreigners suspected of committing crimes in Indonesia. Whereas according

to the Criminal Procedure Code, the Police are only investigators of criminal acts in territory of Republic Indonesia.[7]

The elimination of the authority of Police Investigators in investigating criminal acts committed by foreigners is stated in Chapter X Concerning Investigations, in Article 105 of Law Number 6 of 2011 Concerning Immigration, which is formulated: "The PPNS (*Investigation Authority*) of Immigration is given the authority as an investigator of immigration crimes which is carried out in accordance with the provisions of this law. In the sense that Article 105 is legal basis for PPNS Immigration Investigators to conduct investigations into immigration crimes. The provisions of Article 105 imply meaning that investigators of immigration crimes are Civil Servants (PNS) who are given the authority to conduct investigations into criminal acts, hereinafter referred to as Civil Servant Investigators (PPNS).

The indication of the elimination Police's authority in supervising, securing, and taking action against foreigners can be understood by the absence of any provisions in the article that give the Police authority to supervise, secure, and take action against foreigners in the territory of Indonesia. The elimination of the Police Investigator's authority is theoretically considered inappropriate, considering that the Police's authority in investigating criminal acts is an attributive authority granted by the state through Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. In addition, it also takes into account Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) which gives the Police authority as the sole investigator of criminal acts in Indonesia, and also by considering Law Number 2 of 2002 concerning the Police, which emphasizes that the police are a government apparatus that functions to maintain public security and order, law enforcement, protection, care, and service to the community.

The authority of Civil Servant Investigators of Immigration to conduct criminal investigations is only specific, namely limited to immigration criminal cases.[8] So Civil Servant Investigators generally enforce the law against immigration violations, for example related to immigration documents, residence permits, and so on. However, when foreigners are in the territory of Indonesia, all types of violations committed by foreigners become the authority of Police, such as banking crimes, embezzlement, gambling, and other crimes, which cannot be carried out by immigration.[7]

The legal problem related to the elimination of the Police's authority in the field of immigration is not only limited to problems related to conflicts of authority or authority norms that conflict with legal products at the statute level, but also there is a discrepancy or lack of synchronization with the constitution, namely a discrepancy with the constitution, in this case with the 1945 NRI Constitution. This discrepancy can be seen in the provisions of Article 30 paragraph (4) of the 1945 NRI Constitution, which reads, "The Republic of Indonesia National Police as a state apparatus that maintains public security and order has the duty to protect, serve, and uphold the law." [6]

In the above, there is also disharmony between the 2011 Immigration Law and the Police Law and the Criminal Procedure Code, which theoretically constitutes a horizontal norm conflict. In case of such a norm conflict, then by referring to the opinion of Gert Frederick Malt, the resolution uses principle of *lex specialist derogat legi generalis*. Based on this principle, in fact the elimination of Police's authority to supervise, secure, and take action against foreigners is not theoretically wrong. However, it must be remembered that the 2011 Immigration Law is contrary to the 1945 Constitution of Republic Indonesia, and according to the Criminal Procedure Code, the Police are the only criminal investigators in Indonesia. Therefore, if there is an elimination of the authority of Police Investigators against foreigners who commit crimes

in Indonesia, it can be said to be a form of violation of the constitution or unconstitutional. Because the elimination of the Police's authority to supervise foreigners legally contradicts the 1945 Constitution of the Republic of Indonesia and Law Number 2 of 2002 concerning the Indonesian National Police.

In the event of a violation of the law committed by a foreigner in the territory of Indonesia, it automatically becomes the responsibility of law enforcement officers, in this case the Police whose function and duty is to enforce the law against violations of law by anyone, including foreigners in Indonesia. Supervision, security, and action against foreigners in Indonesia, especially to prevent and overcome violations or criminal acts, are very important to do. Therefore, if a crime occurs, the investigation must be carried out by investigators who are authorized by state based on the law. [9]

### **Conclusion**

The authority of the Police in supervising, securing, and taking action against foreigners in Indonesia has fluctuated between being present and non-existent, resulting in legal uncertainty regarding involvement the Police. Theoretically, the regulation of authority the Police in supervising, securing, and taking action against foreigners in Indonesia, there is a dissynchronization between the 2011 Immigration Law and the 1945 Constitution of Republic Indonesia and its implementing regulations, as well as disharmony between the 2011 Immigration Law and the Police Law, and the Criminal Procedure Code, so that in its implementation it results in apathy or passivity in supervising, securing, and taking action against foreigners in Indonesia.

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