



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 20, 2021

**A new decade
for social changes**

www.techniumscience.com

ISSN 2668-7798



9 772668 779000

Reconstruction of the Immigration Authority in Legal Protection of Indonesian Citizens Abroad

Lucky Agung Binarto¹, Made Warka², Slamet Suhartono³, Otto Yudianto⁴

^{1 2 3 4}Faculty of Law, Universitas 17 Agustus 1945 Surabaya, Indonesia

luckyagungbinarto64@gmail.com

Abstract. This study uses normative research. Globalization is a reality that cannot be avoided, having an impact on increasing the mobility of the world's population from one country to another. The mobility of the population is based on the various interests and goals that are different from each person, such as reasons for business, tourism, education, work and various other interests. Immigration as an institution whose authority, duties and functions are related to *exit permits* or the entry and exit of Indonesian citizens, as well as foreign citizens, should be given the authority to participate in helping carry out the duties of legal protection for Indonesian citizens abroad. With the addition of this one authority, the Immigration authority which originally had only 4 powers, namely the authority to provide public services, the authority to carry out the security function, the authority to carry out the function of law enforcement, and the authority to facilitate economic development, then one more authority to carry out the function of legal protection.

Keywords. immigration; legal protection

Introduction

Globalization is a reality that cannot be avoided, having an impact on increasing the mobility of the world's population from one country to another. The mobility of the population is based on the various interests and goals that are different from each person, such as reasons for business, tourism, education, work and various other interests. (Flew, 2020) Many positive impacts are obtained for destination countries, but there are also not a few negative impact, such as narcotics, terrorism, fraud, murder, abuse of visas or residence permits, abuse of immigration documents, *trafficking* or human trafficking, *cyber crime* and others, etc. The negative impact of globalization isn't only detrimental to victims, but also to the country of origin of the perpetrator of the crime, as well as the country where they live. For the perpetrator's country of origin, these losses aren't only limited to the good name of the country, but also cause the country of origin to seek various efforts to save or help free the perpetrator's of criminal acts and victims of crimes in other countries. (Klein & Barry, 2007)

Perpetrators of criminal acts and / or victims of criminal acts in other countries, aren't limited to foreign nationals in Indonesia, but also not a few Indonesian citizens abroad. Theoretically, related to criminal acts and / or other illegal acts committed by Indonesian citizens, in any country is the personal responsibility of the perpetrator. However, legally

constitutional, the state also has an obligation to be responsible for providing guarantees of legal protection to its citizens wherever they are. (Denza, 2018)

The obligation of the Indonesian state, in providing guarantees of legal protection to its citizens, is stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, which implicitly entrusts the state to guarantee legal protection for all Indonesian citizens. (Triwati, 2019) This mandate is formulated as follows “The state protects the entire nation and all the blood of Indonesia, promotes public welfare, educates the nation’s life and participates in implementing world order based on eternal peace”. For this reason, this research will discuss the *urgency* of reconstructing the authority of immigration in efforts to protect the law for Indonesian citizens abroad and the concept of reconstructing the authority of immigration in legal protection for Indonesian citizens abroad.

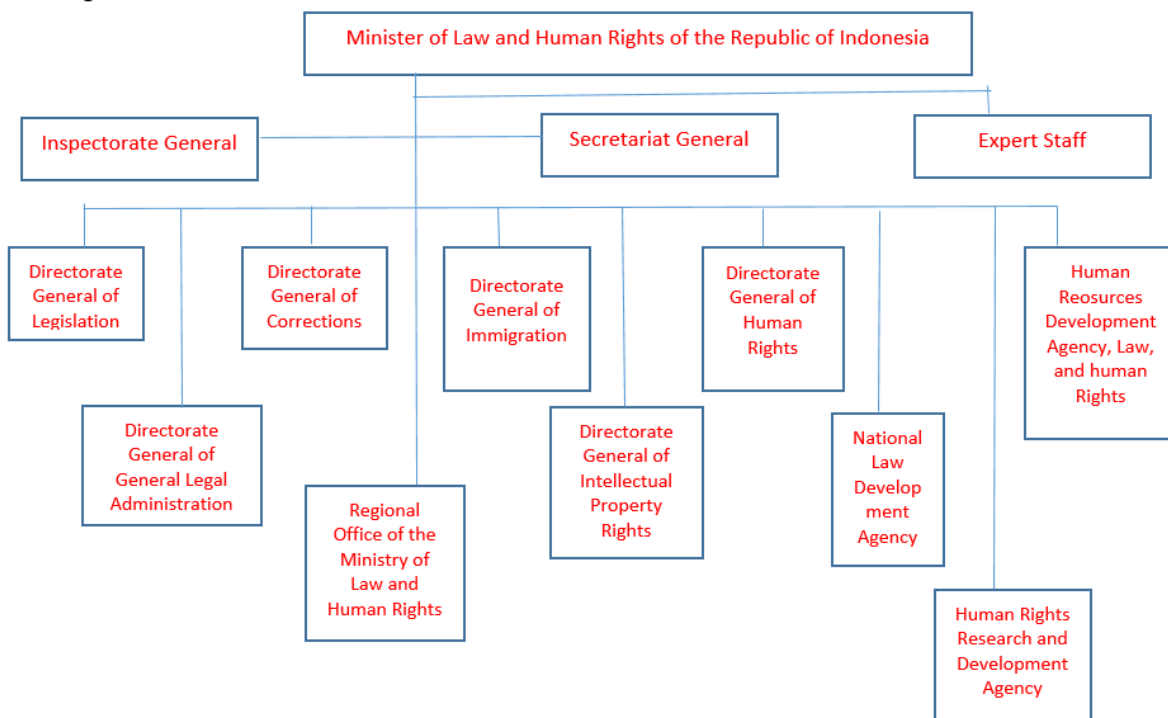
Research Methods

This study uses normative research. (Michael, n.d.)

Research Results and Discussion

Immigration Organization Structure

The Directorate General of Immigration, doesn’t only take care of the entry and exit of foreigners to and from Indonesia, who work or for other purpose, or who reside in Indonesia. Immigration organizations as state institutions in the constitutional structure are organizations that have a very vital meaning, as gatekeepers of state sovereignty as stated in the organizational structure below:



The Essence of Legal Protection for Indonesian Citizens Abroad

Legal protection for Indonesian citizens abroad cannot be separated from the existence of the inherent rights of every Indonesian citizen, both in his position as an individual and in his position as a citizen. It’s in this condition that the state must be present in the midst of society, whether requested or not, to provide guarantees of protection for each of its citizens due to actions that harm others. This legal protection aims so that everyone can enjoy all the rights provided by law, both individual rights and social rights. (Miller, 1930) Thus, legal

protection is a variety of legal remedies that must be provided by law enforcement officials to provide a sense of security, both mindfully and physically from harassment and various threats from any party.(Tatawu, 2018) In relation to the authorities, legal protection is an effort to protect people from arbitrary or arbitrary actions by the authorities, which aren't in accordance with the rule of law, in order to create order and peace, thus enabling humans to enjoy their dignity as humans. This opinion is in line with the opinion of Philipus M. Hadjon, who said that legal protection is a protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions of arbitrariness.(Philipus M. Hadjon, n.d.)

This legal protection is a form of preventive legal protection, which is in the form of a collection of rules or rules that can be used to protect human rights. Thus, legal protection is an effort to create guarantees for the protection of one's rights.(Burgess, 2020) furthermore, Philipus M.Hadjon said that legal protection is an effort to provide protection for human dignity, as well as recognition of human rights possessed by legal subjects based on the provisions of the applicable laws and regulations.(Philipus M. Hadjon, 2015) Conceptually, the legal protection provided to the Indonesian people is an implementation of the principle of recognition and protection of human dignity. Furthermore, Philipus M. Hadjon said that preventive and repressive legal protection is a form of legal protection that provides substance to the ideal concept of legal protection. Philipus M. Hadjon also argued, that there are two principles of legal protection for the Indonesian people, namely principles that are based on the concept of protection of the people due to arbitrary actions by the government, as a form of recognition and protection of human rights. Preventive legal protection in the field of immigration is the entire legal norm in the field of immigration, which includes the rules of conduct for people who enter and exit Indonesia, both Indonesian citizens themselves, as well as foreign citizens who come to and from Indonesia. The inclusion of this pattern of legal behavior can be used to direct everyone who will come and go from and to Indonesia, in order to prevent violations of the Indonesian state law. In addition, by regulating immigration activities, it also concerns the rules that apply to immigration officials, particularly those related to limiting their authority in handling immigration problems. By regulating the limitation of immigration authority, it will prevent abuse of immigration officials or personnel against everyone related to the immigration activity.(Arevalo-Ramirez & Maclean, 2020) This is in accordance with the theory of preventive legal protection from Philipus M. Hadjon, that preventive legal protection is directed through the inclusion of citizens' rights in the law.(Subhan, 2019) Quoting Salmond's opinion, Fitzgerald stated that the purpose of law is to integrate and coordinate various interests in society, because in a traffic of interests, protection of certain interests can be done by limiting various interests on the other side.(Fitzgerald, 2020) Legal interests are dealing with human rights and interests that need to be regulated and protected.

The Concept of Reconstruction of Immigration Authority Legal Protection of Indonesian Citizens Abroad

Immigration authority in the implementation of functions and duties of protection for Indonesian citizens abroad carried out by the Representatives of the Republic of Indonesia abroad in competence and capacity can be said to be still limited.(Motomura, 2015) Protection of Indonesian citizens abroad most of the protection duties have been carried out by Immigration Officers who are assigned as Immigration Attaches / Technical Staff at the Representatives of the Republic of Indonesia abroad. The protection duties referred to include negotiation, diplomacy, documentation, return and handover to Indonesia.(Alamsyah & Bahari, 2019) The entire series of tasks is closely related to the immigration function of both the

immigration of the destination country and the country of origin. Based on the analysis of the problems raised in this study, related to the duties and authorities of the Immigration function, there is no clear explanation about the facts and the role of the Directorate General of Immigration, in terms of providing assistance and protection of immigration to Indonesian citizens abroad. In connection with that, to further improve or improve the Immigration function in providing legal protection to Indonesian citizens abroad, it's deemed necessary to add the authority of Immigration to strengthen the ability and success / achievements of Immigration Officers who are assigned to Representatives of the Republic of Indonesia abroad, in carrying out their duties. Immigration negotiations and diplomacy with the local government where Indonesian citizens are located. Either in the form of awards or other marks given by the country of assignment and related agencies in the country. (Forcese, 2006)

Through the addition of 1 (one) subsection at the Directorate of Immigration Cooperation which is tasked with carrying out the preparation of policy formulation and implementation, providing technical guidance and supervision and evaluation in the field of immigration cooperation based on technical policies stipulated by the Director General of Immigration. Furthermore, the Sub-directorate of International Immigration Cooperation consists of :

a. Bilateral Immigration Cooperation Section;

Has the task of preparing formulation materials, technical guidance, supervision, coordination, and implementation and evaluation of immigration cooperation between the Government of the Republic of Indonesia and one country.

b. Multilateral Immigration Cooperation Section;

The Multilateral Immigration Cooperation Section has the task of preparing formulation materials, technical guidance, supervision, coordination, and implementation and evaluation of immigration cooperation between the Government of the Republic of Indonesia and several countries.

c. Cooperation Section for the Protection of Indonesian Citizens

The Cooperation Section for the Protection of Indonesian Citizens has the task of preparing materials for the formulation, supervision, coordination, and implementation and evaluation of immigration cooperation between the Government of the Republic of Indonesia and several countries in the framework of the Protection of Indonesian citizens.

This Sub-directorate of International Immigration Cooperation is expected to play a role in framework of legal protection for Indonesian citizens abroad. In connection with that, it's hoped that in the future the Immigration institution will truly become a good partner for all state representatives in providing protection for Indonesian citizens abroad.

Conclusion

Immigration as an institution whose authority, duties and functions are related to *exit permits* or the entry and exit of Indonesian citizens, as well as foreign citizens, should be given the authority to participate in helping carry out the duties of legal protection for Indonesian citizens abroad. With the addition of this one authority, the Immigration authority which originally had only 4 powers, namely the authority to provide public services, the authority to carry out the security function, the authority to carry out the function of law enforcement, and the authority to facilitate economic development, then one more authority to carry out the function of legal protection.

The concept of reconstructing the authority of immigration in relation to legal protection for Indonesian citizens abroad begins with the establishment of a Directorate in the field of foreign cooperation. The addition of this Directorate was followed by the granting of new

powers which gave the power to carry out the task of protecting the law for Indonesian citizens abroad. The addition of this new sub-directorate of course must be done with changes to the Immigration Law, so that it has the same power as other sub-directorates and their existing authorities.

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