

ELDERLY SUPERVISION OF PERMANENT LICENSE HOLDER BASED ON LAW NUMBER 6 YEAR 2011 ON IMMIGRATION

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Abstract: *Globalization of the world, making the borders of the country more accessible and impenetrable, technology and transportation make it easier for people to enter and exit a territory of the country, including elderly foreign tourists. State through Law no. 6 Year 2011 on Immigration gives the authority to the immigration authorities to conduct supervision on foreigners who will enter or live in the Territory of Indonesia. The formulation of the problem: how the arrangement of overseas supervision of permanent resident holders of permanent residence, and the prosecution of abuses of permanent residence permit by an elderly foreigner. The purpose of this paper is to know, examine, and analyze the regulation and supervision of elderly foreigners, and the abuse of residence permit by elderly foreigners. Research method, the type of research is normative research, with the approach of legislation, conceptual, and approach cases, legal materials used researches are: primary legal materials, secondary legal materials and tertiary legal materials. The technique of collecting legal materials is done through documentation study; the legal material that has been collected is analyzed qualitatively, profoundly, holistically and comprehensively. Conclusion: a. Regulation of supervision of foreigner permanent resident permit, regulated in Act No. 6 of 2011, PP No.31 of 2013, and Regulation of Minister of Law and Human Rights Republic of Indonesia No.4 Year 2017 specially related to field supervision on existence and the activities of foreigners in the Territory of Indonesia, the normative formulation is vague, but the immigration apparatus controls the foreigners in accordance with the authority it possesses: oversight of foreigners with the Foreigner Oversight Team, in cooperation with the owner or the board of residence regarding the data of foreigners residence in the inn, and in the framework of protecting the national interest, b. The action against the abuse of permanent residency by an elderly foreigner, in the form of pro justice (judicial) action, and administrative measures of deportation and detention. Romolo Leonessa's case holds an Elderly Stay Permit Card (ITAP), abusing her residence permit for business, so that the complainant fulfills the element of article 122 letter a of Act No. 6 Year 2011, but the proof is difficult because immigration apparatus cannot fulfill the prosecutor's demand to do confiscation of Romolo Leonessa's assets in the form of land, so the Letter of Notice of Termination of Inquiry (SP3) issued by the Head of Immigration Office of Mataram, then Romolo Leonessa in deportation.*

Keywords: *supervision of an elderly foreigner, permanent residence permit*

I. INTRODUCTION

Globalization of the world, making the borders of the country more accessible and impenetrable, technology and transportation make it easier for people to enter and exit a territory of the country, so it is not surprising that foreign tourists visit to Indonesia also increases, including foreign tourists elderly. WHO age-old definition when aged 60-74 years. According to Prof. Dr. Sumiati Ahmad Mohammad, Professor of Gajah Mada University Faculty of Medicine aged 65 years and above is called the elderly or senium.¹ In the year 20019, it is expected the visit of foreign tourists 20 million people per year.² Understanding elderly tourists are: foreign tourists who are at least 55 years old.³

The presence of foreigners in Indonesia, in addition to having a positive influence, has also given a negative impact of the emergence of threats to the security and sovereignty of the country, namely: misuse of residence permits, illegal immigrant flows, people smuggling, trafficking in children and women of international dimensions and increased international syndicates in the areas of terrorism, narcotics, money laundering, smuggling and others. State through Law no. 6 Year 2011 on Immigration gives the authority to immigration to supervise foreigners who will enter or live in the Territory of Indonesia; the immigration aspect applicable in each country has the universal characteristic and specificity of each country according to the value and the needs of the country.⁴

Based on the Decree of the Minister of Justice of the Republic of Indonesia Number: M.04-12.01.02 of 1998 concerning the Granting of Visas and Immigration Stay Permits for Seniors Abroad,⁵ elderly tourists are not allowed to work or conduct activities to earn a living and do business.

Immigration Control regulated in Article 68 of Law No. 1 Year 2011 on elderly foreigners, shall be carried out at the time of Visa, entry or exit application, and the granting of Residence Permit shall be performed by: collection, processing, and presentation of data and information; the compilation of the list of foreigners who are subjected to deterrence or prevention; supervision of the existence and activities of foreigners in the Territory of Indonesia; taking photos and fingerprints; other activities that may be legally accountable. Supervision of the existence and activities of foreigners in the Territory of Indonesia, furthermore the supervision of foreigners shall be regulated in Government Regulation No.31 of 2013 on the Implementing Regulation of Law No. 6 Year 2011 on Immigration, Article 181 stipulates: Field

¹ Ardi Al-Maqassary, "Understanding Seniors", *Jurnal.com/2013/09/pengertian lanjut-usia,Html.*, downloaded Tuesday, January 16, 2017

² Suyoto Rais, "Targeting the Japanese Elderly", *Jawa Pos* January 16, 2017, p. 4

³ Attachment of Decision of Directorate General of Immigration Number: F.492-UM.01 Year 2002 dated April 18, 2002 on Implementation Guideline for Immigration Visas and Immigration Permit for seniors.

⁴ Wahyudin Ukun, *Deportation as an instrument of law enforcement and state sovereignty in the field of immigration*, (Jakarta: PT. Adi Kencana Aji, September 2004), p. 31.

⁵ Has been amended by Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia No: M.07.IZ.01.02 of 2006 concerning Amendment to Decree of the Minister of Justice of the Republic of Indonesia No: M.04-IZ.01.02 of 1998 concerning the Granting of Visas and Immigration Permits For Seniors Abroad, only change Article 3: Foreign aged travelers from countries referred to in Article 1 consist of: South Africa, USA, Argentina, Australia, Austria, Bahrain, Belgium, Netherlands, Brasilia, Brunei Darussalam, Bulgaria, Cyprus, Denmark, India, United Kingdom, Ireland, Iran, Iceland, Italy, Japan, Canada, Canada, South Korea, Kuwait, Liechtenstein, Luxembourg, Maldives, Malaysia, Malta, Egypt, Monaco, Norway, Oman, France, Philippines, Poland, Portugal, Qatar, Russia, Saudi Arabia, New Zealand (New Zealand), Singapore, Spain, Suriname, Sweden, Switzerland, Taiwan, Thailand and Greece.

supervision of foreigners can be done with : field supervision of the presence and activities of foreigners in the Territory of Indonesia, including checking: the presence of foreigners; activities of foreigners, and the completeness of travel documents or resident ownership. The formulation of the norm in this article is vague because it is formulated with the word can, and in its explanation it is said quite clearly.

From the above background formulated the following issues: how the arrangement of supervision of foreigner's elderly holders of permanent residence, and the prosecution of abuses of permanent residence permit by an elderly foreigner. The purpose of this paper is to know, review, and analyze the arrangements and supervision of elderly foreigners, and the abuse of residence permits by elderly foreigners.

II. RESEARCH METHODS

The type of research is normative research, through approach of legislation, conceptual, and case approach, legal material used by research are: primary law material, secondary law material and tertiary legal material. The technique of collecting legal materials is done through documentation study; the legal material that has been collected is analyzed qualitatively, profoundly, holistically and comprehensively.

III. RESULT AND DISCUSSION

3.1 Arrangements for Overseas Supervision of Holders of Permanent Stay Permit under Law No. 6 of 2011

Generally, foreign control arrangements are regulated in UU No.6 of 2011 on Immigration, Government Regulation No.31 of 2013 on Implementation of Law No. 6 Year 2011 on Immigration and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia on Immigration Control Procedures, including old foreigner holders of permanent residence.

Based on UU No.6 of 2011 on Immigration, immigration supervision of foreigners shall be started at the time of Visa application, entry or exit, and the granting of residency by collection, processing and presentation of data and information, the compilation of the list of foreigners who are subjected detention or prevention, and supervision of the presence and activities of foreigners in the Territory of Indonesia, taking photos and fingerprints, and activities that are legally accountable (Article 68 paragraph (1) Furthermore, foreign control is regulated in Government Regulation No.31 of 2013 on the Implementation of Law Number 6 Year 2011 on Immigration (hereinafter referred to as Government Regulation No.31 of 2013), Article 174 paragraph (1) regulates immigration supervision consisting of, administrative oversight and field supervision Article 180 paragraph (1) regulates administrative oversight against foreigners is done by collecting, processing, and presenting data and information on immigration services, traffic of persons entering and leaving the Territory of Indonesia, foreigners who have obtained a decision on detention, foreigners in the process of immigration status and / or immigration action, foreigners licensed outside the Immigration Detention Home, foreigners in the criminal justice process, including the compilation of a list of foreigners who are subjected to deterrence and prevention, along with photo taking and fingerprinting. The result of administrative supervision is immigration data which is done through Immigration Management Information System. In Article 189 paragraph (1): Field supervision of foreigners may be conducted by

supervising the presence and activities of foreigners in the Territory of Indonesia, including checking the presence of foreigners, activities of foreigners, and completeness of travel documents or residence permits. The formulation of the norm in Article 181 of PP No.31 of 2013 is a blurred norm because it is formulated with the word can, not clear by way of how the field supervision of the existence and activities of foreigners in the Territory of Indonesia carried out, in the explanation of this rule is written quite clearly. Technical guidance on the procedures for supervision of immigration, stipulated in Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia No. 4 of 2017 on Immigration Control Procedures, on the formulation of the norm of Article 57: “Field supervision of foreigners may be conducted by supervising the existence and activities foreigners in the Territory of Indonesia, including checking the presence of foreigners, activities of foreigners, and completeness of travel documents or residence permits owned. This is a repetition of the formulation of the norm in Article 181 of PP No.31 of 2013 in other words the Decree of the Minister of Justice and Human Rights No.4 of 2017, not enough to explain in a way how the field supervision of the existence and activities of foreigners in the Territory of Indonesia , then Article 58 regulates, field supervision can be carried out periodically or at any time, this adds to the vagueness of the meaning of supervision on the existence and activities of foreigners in the Territory of Indonesia. Thus, field supervision of the existence and activities of foreigners is a continuation of administrative oversight, if the alien is allegedly misusing a residence permit granted by the Government of the Republic of Indonesia.

Observing the articles of Act No. 6 of 2011, PP No.31 of 2013, and Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia No. 4 of 2017, in particular related to the field supervision of the existence and activities of foreigners in the Territory of Indonesia, even though the norm escapes, but the immigration apparatus continues to perform its duties in accordance with the authority it possesses:

- a. To supervise foreigners with the Foreigner Oversight Team (PORA Team) both at the Center and in the regions, whose members consist of related bodies / institutions (Article 69 of Law No. 6 Year 2011);
- b. In cooperation with the owner or the board of residence regarding the data of foreigners living in the inn (Article 72 of Law No.6 Year 2011)
- c. Based on a selective policy that upholds the value of human rights, the entry of foreigners to the Territory of Indonesia, must be in accordance with the intent of its existence in Indonesia, this is intended in order to protect the national interest, only beneficial foreigners and not endanger the security and public order
- d. Allowed to enter and be in the Territory of Indonesia. Thus all Indonesians participate in overseeing the presence and activities of foreigners in their territory by reporting to the Immigration / Tim PORA apparatus, if any foreigner commits any suspicious activity.

3.2 Penalty against Abuse of Permanent Stay Permit By The elderly Foreigner

Enforcement and enforcement of immigration laws against foreigners in Indonesia are of two kinds: projustice (court), and administrative measures of deportation and detention.⁶ Pro

⁶ Muhammad Indra, “*Law Enforcement Perspective in Indonesia's Immigration Law System*”, *Dissertation*, Post-Graduate Doctoral Program of Padjadjaran University, Bandung, 2008, p.2.

justice action, starting from the investigation process, then proceeded to court, while the administrative action in the field of immigration (deportation) outside the judicial process.⁷

The case of immigration crime against abuse of stay permit by an elderly traveler occurs in the Working Area of the First Class Immigration Office of Mataram, on behalf of Romolo Leonessa The Italian citizen holding the Elderly Stay Permit Card (ITAP) Number 2D21CE0007-K valid until July 21, 2016, with Sponsor PT. Tour and Travel Officers are issued by the First Class Immigration Office of Mataram.⁸ While in Indonesia Romolo Leonessa lives in North Lombok. Romolo Leonessa reported by Rahim has conducted a land buying activity in Tembowong with Nominee on Rahim's behalf. The Reporting Parties also reported that reported several times rented part of the villas for guests with profit. In 2009 Romolo Leonessa bought a plot of 7,584 sqm (seven thousand five hundred eighty four) in Dusun Tembowong for the purpose of making a well for 2 (two) months, then flowed to Gili Gede with a fence around the well. The remainder of the purchased land is then resold by making a brochure or a "Sale Kapling" advertisement containing a plot map of the land of SPPt no. 52.01.010.001.064-0073.0 Class A40.

In the process of examination Romolo Leonessa meets the elements as regulated in Article 122 letter a, Law no. 6 Year 2011:

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

- a) Any foreigner who deliberately misuses or performs activities that are inconsistent with the intent and purpose of granting a residence permit granted to him or her
- b) Anyone who orders or gives opportunity to a foreigner misuses or undertakes activities that are inconsistent with the intent and purpose of granting the residence permit granted to him

Thus, Romolo Leonessa deliberately misuses or undertakes activities that are inconsistent with the intent and purpose of granting a residence permit granted to him, ie permanent residence for the elderly traveler, which is based on the Decree of the Minister of Justice of the Republic of Indonesia No. : M.04-12.01.02 years 1998 on the Granting of Visas and Immigration Stay Permit for Seniors, that foreign tourists are not allowed to work or conduct activities to earn a living and to do business.

After the investigation process of immigration crime conducted by Romolo can not be continued due to several things:

- 1) Based on the directive of the prosecutor in the return of the court file on behalf of Romolo Leonessa who is suspected of violating Article 122 letter a Law no. 6 of 2011 concerning Immigration (P-19) No. B-2146 / P.2.1 / Euh.1 / 17/2016 dated 22 July 2016 at point 1 completeness of sub formal 3 stating that the confiscation of letters relating to sale purchasing land cannot be done because the letters have been transferred (transfer of ownership status) so that it is difficult to verify and seizure of the evidence.

⁷ Result of Interview with R.Agung Wibowo, Head of Supervision and Implementation of Immigration Office of Mataram, Monday, 19 December 2016

⁸ Mataram Immigration Office Class I Mataram, Case Files Report: BP / 02 / IV / 2016 / DIKKIM / Mataram: Criminal Acts: Strangers Intentionally Abuses or Performs Activities Not in Conformity with the Purpose and Purpose of Granting Permanent Residence Permit Provided to Mataram August 3, 2016.

- 2) Based on the attorney's instructions to attach the approval of the seizure of approval from the Chief Justice in relation to the seizure of 2 (two) accounts of Bank Central Asia savings account number 0560421109 period October 2014 October 2015
- 3) On May 22, 2017, a case was taken against Immigration Crimes conducted by Romolo Leonessa to find out to what extent the progress of the case against the Report of Occupation Number: LK / 03 / III / 2016 / DIKKIM / MATARAM dated 04 February 2016 regarding alleged action Immigration Crime as referred to in Article 122 of Law Number 6 Year 2011 which is allegedly committed by Romolo Leonessa investigated by Civil Servant Investigator of the First Class Immigration Office of Mataram, through the exposure and information of the investigation is known the progress of the investigation and the follow-up of the investigation. From the title of the case obtained the following things:
 - a) Collection of evidence and further examination of incriminating and lightening witnesses;
 - b) Conduct legal remedies to comply with P-19 of the Prosecutor;
 - c) Make SP2HP to avoid Pre-Court slit from the plaintiff;
 - d) It may be considered to be granted SP-3 in order to re-obtain a residence permit for the purpose of medical treatment abroad;
 - e) A SP-3 may be revoked if a further legal action is to be taken;
 - f) Make a legal remedy to continue criminal cases if civil cases have obtained permanent legal force (*inkrah*);
 - g) If there is a deadlock in the handling of this case, it can be made Immigration Administrative Efforts in the form of deportation
- 4) On May 31, 2017 the Head of the Immigration Office issued a Notice of Termination of Investigation (SP3) against Romolo Leonessa case, as there was insufficient evidence or did not fulfill the constituent articles and informed the State Attorney of Mataram and the return of confiscated objects to the owner of the object.

IV. CONCLUSION AND RECOMMENDATION

4.1 Conclusion

- a. Regulation of supervision of foreigner permanent resident permit, regulated in Act No. 6 of 2011, PP No.31 of 2013, and Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia No. 4 of 2017 in particular relating to field supervision of the existence and the activities of foreigners in the Territory of Indonesia, the normative formulation is blurred, but the immigration apparatus keeps oversight of the foreigners in accordance with the authority it possesses: oversight of foreigners with the Foreigner Oversight Team (PORA Team) both at the Center and in the regions whose members consisting of related bodies / agencies; in cooperation with the innkeeper or resident regarding data of foreigners living in the inn; in order to protect the national interest in accordance with the selective policy, only foreigners who are useful and do not endanger the security and public order are allowed to enter and reside in the Territory of Indonesia, all Indonesian people participate oversee the presence and activities of foreigners in its territory by reporting to the immigration apparatus / PORA Team, if any stranger is doing suspicious activity.

- b. Penalties for abuse of permanent residency by elderly foreigners, in the form of projustice (court action), and administrative actions in the form of deportation, and detention. Romolo Leonessa's case holds an Elderly Stay Permit Card (ITAP), misuses her residence permit for business, purchases and sells land, also rents out villas, so that the subject complies with article 122 letter a of Act No. 6 of 2011, but the proof is difficult because the immigration apparatus cannot satisfy the prosecutor's demands to foreclose on Romolo Leonessa's assets in the form of land, for various reasons the Head of the Mataram Immigration Office issued a Notice of Termination of Investigation against the Romolo Leonessa case, as there is insufficient evidence or does not fulfill the constituent elements of the article, next Romolo Leonessa in deportation.

4.2 Recommendation

- a. The Immigration Apparatus should improve coordination with the PORA Team in overseeing the presence and activities of foreigners in the Territory of Indonesia.
- b. The Immigration Apparatus should conduct socialization and cooperation with the community in the tourist area, to report the existence and activities of suspicious foreigners.

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