



Obligations of Guarantors of Foreign Nationals (WNA) in Indonesia based on Article 63 Paragraph (3) of Law No. 6 of 2011 Concerning Immigration

Riki Riyadi; L. Husni; RR. Cahyowati

University of Mataram, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v9i6.3724>

Abstract

Based on Law No. 6 of 2011 concerning Immigration, every Foreign National / certain foreign person living in Indonesia must have an Immigration Guarantor. The Immigration Guarantor can guarantee a visit residence permit, a limited residence permit, and a permanent residence permit for a Foreign National. The purpose of this study is to analyze the obligations of guarantors of Foreign Nationals in Indonesia based on Article 63 Paragraph (3) of Law No.6 of 2011 concerning Immigration. Research methods, types of normative legal research with a statutory approach (statute approach), and a concept approach (conceptual approach). In conclusion, the obligation of guarantors of Foreign Nationals based on Article 63 Paragraph (3) of Law No. 6 of 2011 concerning Immigration, does not explain what is meant by costs incurred, cost restrictions, details of cost items that become the obligation of the guarantor to repatriate or issue foreigners from the Territory of Indonesia, this will cause multi-interpretation and does not meet the principle of legal certainty.

Keywords: *Obligations of Guarantors; Foreign Nationals; Immigration*

Introduction

Law No. 6 of 2011 concerning Immigration (hereinafter written immigration law) involves the participation of the community in carrying out supervision and assisting the enforcement of immigration law. This participation can be seen from the obligation of foreigners or foreign nationals (hereinafter abbreviated as foreigners) to have immigration guarantors. This is stipulated in Article 63 Paragraph (3) of the Immigration Law which requires certain foreigners located in Indonesia to have a guarantor who guarantees their existence in Indonesia. The specific foreigner or foreigner in question is a foreigner who holds a visit residence permit, limited or permanent.

In carrying out the guarantee of the residence permit, the guarantor has several obligations for the existence and activities of foreigners that he guarantees while in the Territory of Indonesia. One of the obligations of the guarantor is Article 63 Paragraph (3) of the Immigration Law which states that the guarantor must pay the costs incurred to repatriate or remove foreigners from the Territory of Indonesia if the foreigner concerned has expired his residence permit and/or is subject to immigration administrative measures in the form of deportation. The costs incurred in the provisions are not clearly stated the limits and details of what costs must be met by the guarantor, if the guarantor does not fulfill his obligations, will have very severe legal consequences as article 118 of the Immigration Law, which states that the

guarantor who deliberately gives incorrect information or does not meet the guarantee given is punishable by imprisonment for a maximum of 5 (five) years and a maximum fine of Rp 500.000.000.00 (five hundred million rupiahs). This condition causes the position of immigration guarantor in Indonesia to be dilemmatic in carrying out its obligations. Thus, this paper highlights the obligations of foreign national guarantors in Indonesia based on Article 63 paragraph (3) of Law No.6 of 2011 concerning Immigration.

Methods

This type of research is normative legal research, with approaches: statute approach, conceptual approach. The types and sources of legal materials used are primary, secondary, and tertiary legal materials, legal materials are literature law materials. The technique of collecting legal materials is by studying documents. Legal materials are collected and qualitatively analyzed.

Result and Discussion

The immigration selective policy implemented by the government through the Immigration Office requires the involvement of the role of the community and can provide guarantees and responsibility for the existence of foreigners while in Indonesia. The role of the guarantor can help in the process of monitoring and controlling the existence of foreigners who are guaranteed, so it is expected to minimize the problems caused by foreigners.

The role of the Guarantor cannot be underestimated because it plays a role in efforts to help the government to ensure that foreigners living in the Territory of Indonesia can comply with applicable laws. What is meant by a guarantor is a person or corporation that is responsible for the existence and activities of foreigners while in the Territory of Indonesia. The role of the guarantor is very important because, in addition to being responsible for the existence and activities of foreigners that he guarantees, he is also obliged to report any changes in civil status, immigration status, and change of address of the foreigner (Safitri, 2021), while the understanding of obligation is everything that is considered a necessity to be implemented by individuals as members of citizens to get the rights they deserve. According to Darji Darmodiharjo, an obligation is something that must be done by certain parties responsibly. The principle can be forcibly prosecuted by interested persons (Darmodiharjo, 2006). Understanding WNA is a person who is not an Indonesian citizen and is in Indonesia (Supramono, 2012). Immigration, from Latin, is "immigration" which means the transfer of population from a country to enter into another country (Wijayanti, 2011). Etymologically the terms emigration, immigration, and transmigration are derived from Latin migration, which means population displacement (Hamidi dkk, 2015). According to the Immigration Law, what is meant by immigration is the matter of the traffic of people entering or leaving the territory of the Republic of Indonesia and its supervision to maintain the establishment of state sovereignty.

Based on the Regulation of the Minister of Law and Human Rights No. 36 of 2021 concerning Immigration Guarantors, Guarantors in Indonesia consist of individuals and corporations. Corporate guarantors consist of:

- 1.Limited Liability Company;
- 2.Individual companies;
- 3.Foundation;
- 4.Association;
- 5.Cooperation;
- 6.Commander's Guild;
- 7.Firm guild;
- 8.Foreign representatives in Indonesia;
- 9.Non-governmental international organizations in Indonesia;

10. Government agencies.

Thus, there are 10 (ten) guarantors in the form of corporations, including government agencies.

The residence permit for foreigners who are required to have a guarantor is a visit residence permit, a limited residence permit, and a permanent residence permit, unless

1. Foreigners who hold a visit residence permit derived from a visa-free visit, visit visa on arrival, or a visit visa in the framework of travel;
2. Foreigners to invest; and
3. Foreigners in the framework of investment or second home with immigration guarantee.

The residence permit has a different period of stay. The period of the visit residence permit for the holder of the visit visa 1 (one) time of travel is given for a maximum of 180 (one hundred and eighty) days from the date of entry and cannot be extended, while the holder of the visit visa several times is granted for a maximum of 180 (one hundred and eighty) days from the date of entry and can be extended with the provision of the entire residence permit in the Territory of Indonesia, not more than 12 (twelve) months. A limited residence permit is granted for a maximum of 5 (five) years and can be extended with the provision that the overall residence permit is not more than 10 (ten) years. A permanent residence permit is granted for 5 (five) years and can be extended for an indefinite period as long as the permit is not canceled.

Based on Government Regulation No. 48 of 2021 concerning the Third Amendment to Government Regulation No. 31 of 2013 concerning The Implementation Regulation of Law No. 6 of 2011 concerning Immigration, guarantors of foreigners, have the following responsibilities:

1. Responsible for the existence and activities of foreigners guaranteed during their stay in The Territory of Indonesia
2. Obligated to report any changes in civil status, immigration status, and address changes.
3. The guarantor is obliged to pay the costs incurred to repatriate or remove the foreigner he is guaranteed from the Territory of Indonesia if the foreigner is concerned.:
 - a. has expired his Residence Permit; and/or
 - b. subject to Immigration Administrative Measures in the form of deportation

Changes in civil status that must be reported by the guarantor under Article 63 Paragraph (2) of the Immigration Law include:

1. Birth;
2. Death;
3. Marriage;
4. Decomposition;
5. Child recognition;
6. Child endorsement;
7. The appointment of the child;
8. Name change; and
9. Change of citizenship status.

Changes in immigration status that must be reported by the Guarantor as intended include:

1. Passport replacement;
2. Duplicate positions;
3. Transfer of office, and;
4. Transfer the guarantor.

Thus, the guarantor should report civil status and immigration status, including changes in the address of the foreigner's residence, and changes in the address of the guarantor.

The obligation of immigration guarantors in Article 63 Paragraph (3) of the Immigration Law, is not clarified in its implementation regulation, namely Government Regulation No. 48 of 2021 concerning the Third Amendment to Government Regulation No. 31 of 2013 concerning The Implementation Regulation of Law No. 6 of 2011 concerning Immigration. The Guarantor's obligation is only stated: "The Guarantor shall pay the costs incurred to repatriate and/or remove the foreigner he or she guarantees from the Territory of Indonesia if the foreigner is concerned:

- a. has expired its stay; and/or
- b. subject to Immigration Administrative Measures in the form of Deportation.

Thus, the guarantor is obliged to pay the costs incurred to repatriate foreigners because they have expired their residence permit, and are subject to Immigration administrative actions in the form of deportation.

The unclear obligations of the guarantor can also be seen in Article 13 Paragraph (2) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia (Permenkumham RI) No. 36 of 2021 concerning the Guarantor, which only copies from the sound of Article 63 Paragraph (3) of the Immigration Law and Article 171 Paragraph (3) of Government Regulation No.48 of 2021 as a rule implementation of the Immigration Law. Based on these rules, the regulation of the obligations of the Guarantor of Article 63 Paragraph (3) of the Immigration Law experiences a blurring of norms, especially related to understanding, and the limits referred to as costs incurred to repatriate or expel Foreigners from the Territory of Indonesia. For example, if a guaranteed foreigner comes from the State of Russia, then does the Guarantor have to bear the costs incurred to repatriate foreigners from the State of Russia to the State of Russia who need transit at several airports before reaching the State of Russia? or is it enough to get out of Indonesia, for example until Singapore (country/transit airport)? or what is meant by the cost of the return is a plane ticket, sea boat ticket or another conveyance ticket? or also include accommodation (lodging), transportation and consumption? This question is very difficult to answer or explained by Article 63 Paragraph (3) of the Immigration Law and its implementing regulations so that in its application will experience multi-interpretation from guarantors, Foreign Nationals (WNA), and Immigration Officers.

The vagueness of the obligation in the form of a limit on costs incurred is justified by Rahmat Andika, as the Officer of the Immigration Office class I TPI Mataram, which states that the provisions of Article 63 Paragraph (3) of the Immigration Law are general without explaining what is meant by the costs incurred, the cost limits and details of these costs (Andika, 2022). The vagueness of the rule was also justified by Samsul Rijal, the Head of Immigration Licensing and Information at the Immigration Division of the Ministry of Law and Human Rights of West Nusa Tenggara Province (NTB). According to him, it is true that the Immigration Law and the implementation regulations are not explained in detail and related to what is meant by the costs incurred to repatriate or expel the foreigner, so it is too general what is regulated in the regulation (Rizal, 2022).

The obligation of the Immigration Guarantor in Article 63 Paragraph (3) of the Immigration Law is an obligation that is coercive or imperative, if the immigration guarantor does not fulfill the obligation will get legal sanctions as stipulated in Article 118 of the Immigration Law, which states:

“Guarantors who deliberately provide incorrect information or do not meet the guarantees given as intended in Article 63 Paragraph (2) and Paragraph (3) are sentenced to imprisonment for a maximum of 5 (five) years and a maximum fine of Rp500,000,000.00 (five hundred million rupiah).

Based on Article 118 of the Immigration Law, it is known that the sanctions given to immigration guarantors if they do not meet the guarantees under Article 63 Paragraph (3) are very severe and position the guarantor as a fully responsible party. The existence of these sanctions makes immigration guarantors forced to strive to fulfill obligations under any conditions, even though it could be a mistake for the emergence of obligations article 63 Paragraph (3) of the Law is the fault of foreigners.

The existence of an element of WNA error can be seen from the cause of the emergence of guarantor obligations in Article 63 Paragraph (3) because foreigners exceed residence permits and/or are subject to immigration administrative actions in the form of deportation. Excess residence permits in the explanation of the Immigration Law, that foreigners who hold residence permits that have expired their validity period and are still within the Territory of Indonesia less than 60 (sixty) days from the deadline for residence permits are charged a fee following the provisions of the laws and regulations. Foreigners who do not pay the burden are subject to immigration administrative measures in the form of deportation and deterrence. The burden fee for the excess Residence Permit (overstay) is charged at Rp. 1,000,000,- (one million rupiah) for each day of delay. The amount of fees charged to overstayed foreigners is stated in PP No. 28 of 2019 concerning Types and Rates of Non-Tax State Revenue Types Applicable to the Ministry of Law and Human Rights of the Republic of Indonesia (Rizqo, 2022).

Foreigners who have expired their validity period and are still in the Territory of Indonesia more than 60 (sixty) days from the deadline for residence permits are subject to immigration administrative measures in the form of deportation and deterrence. Immigration Administrative Actions are carried out by Immigration Officials who are authorized to foreign people who are in The Territory of Indonesia who carry out dangerous activities and should be suspected of endangering security and public order or disrespecting or not obeying laws and regulations. Immigration Administrative Measures in the form of deportation can also be carried out against foreigners who are in the Territory of Indonesia for trying to avoid threats and the implementation of punishment in their home country. Actions exceeding the residence permit carried out by foreigners and administrative actions in the form of deportation are more focused on the existence of WNA errors, the obligation of the guarantor should also pay attention to the element of error from the foreigner.

The existence of a blurring of the norm of Article 63 Paragraph (3), is a violation of the principle of legal certainty because without legal certainty people do not know what to do and eventually causes uncertainty (uncertainty) which ultimately makes the situation disorder (chaos) due to the indecision of the legal system.

Thus legal certainty refers to the enactment of clear, fixed, and consistent laws where their implementation cannot be influenced by subjective circumstances (Prayogo, 2016) According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be carried out in a good way. Legal certainty requires the existence of legal regulatory efforts in legislation made by authorized and authoritative parties so that the rules have juridical aspects that can guarantee the certainty that the law serves as a regulation that must be obeyed (Asikin, 2014). Normative legal certainty is when regulation is made and promulgated definitively because it regulates clearly and logically. The clear understanding in question does not cause doubt and logic, so it does not clash or cause conflicts of norms. Conflicts of norms arising from the uncertainty of rules can take the form of contestation of norms, reduction of norms, or distortion of norms. Legal certainty is justifiable protection against arbitrary actions which means that a person will be able to obtain something expected under certain circumstances (Jan, 2013). The absence of clarity regarding the costs incurred to repatriate or obtain foreigners will lead to multi interpretations in immigration law enforcement.

Conclusion

The obligation of the Guarantor of Foreigners based on Article 63 Paragraph (3) of Law No. 6 of 2011 concerning Immigration, does not explain what is meant by costs incurred, cost restrictions,

details of cost items that are the obligation of the guarantor to repatriate or issue foreigners from the Territory of Indonesia, this will cause multi-interpretation and does not meet the principle of legal certainty. The Legislature should amend Article 63 Paragraph (3) of Law No. 6 of 2011 on Immigration, by removing the phrase "costs incurred" and replacing it with the phrase "transportation costs" so that the obligation of the guarantor becomes clear, only limited to transportation costs to repatriate or remove foreigners from the Territory of Indonesia.

References

- Ajeng Rahma Safitri, Pahami Pengertian dan Peran Penjamin atau Sponsor Sebelum Datangkan WNA ke Indonesia, <https://www.imigrasi.go.id/id/2021/08/19/pahami-pengertian-dan-peran-penjamin-atau-sponsor-sebelum-datangkan-warga-negara-asing-ke-indonesia/diunduh> Selasa, 12 April 2022
- Darji Darmodiharjo, Shidarta, 2006, *Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia*, Gramedia Pustaka Utama
- Gatot Supramono, 2012, *Hukum Orang Asing di Indonesia*, Sinar Grafika, Jakarta.
- Herlin Wijayanti, 2011, *Hukum Kewarganegaraan dan Keimigrasian*, Bayumedia Publishing, Malang.
- Jazim Hamidi dan Charles Christian, 2015, *Hukum Keimigrasian Bagi Orang Asing di Indonesia*, Sinar Grafika, Jakarta.
- Kanavino Ahmad Rizqo, "Mulai Mei, WNA Overstay Dikenai Denda Rp 1 Juta Per Hari" , <https://news.detik.com/berita/d-4531424/mulai-mei-wna-overstay-dikenai-denda-rp-1-juta-per-hari>, diunduh 25 Februari 2022
- Peraturan Menteri Hukum dan HAM Republik Indonesia No.36 Tahun 2021 Tentang Penjamin Keimigrasian (Lembaran Negara Republik Indonesia Tahun 2021 No. 1064).
- Peraturan Pemerintah Nomor 48 Tahun 2021 tentang Perubahan Ketiga atas Peraturan Pemerintah Nomor 31 Tahun 2013 tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian (Lembaran Negara Republik Indonesia Tahun 2021 Nomor 58, Tambahan Lembaran Negara Republik Indonesia Nomor 6660).
- R. Tony Prayogo, "Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materiil Dan Dalam Peraturan Mahkamah Konstitusi Nomor 06/Pmk/2005 Tentang Pedoman Beracara Dalam Pengujian Undang-Undang", Jurnal Legislasi Indonesia, Volume 13, Nomor 2, 2016.
- Tjia Siau Jan, 2013, *Pengadilan Pajak : Upaya Kepastian Hukum dan Keadilan Bagi Wajib Pajak*, Alumni, Bandung.
- Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 52, Tambahan Lembaran Negara Republik Indonesia Nomor 5216).
- Zainal Asikin, 2014, *Pengantar Tata Hukum Indonesia*, Rajawali Press, Jakarta.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).