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Juridical Review of Criminal Sanction Enforcement In Immigration Law

Budiyanto¹

¹ Faculty of Law, Cenderawasih University, Papua, Indonesia

Email: budiyantouncen@gmail.com

Corresponding Author: budiyantouncen@gmail.com

Abstract: The aims of this research are: 1) to find out the modus operandi of criminal acts in the Immigration sector (Study of Decision Number 713/ Pid.Sus /2022/PN Mks), 2) to find out how the judge considered in handling down Decision Number 713/ Pid.Sus /2022 /PN Mks. The type of research used by researchers is normative legal research using the statutory and case approaches. The research materials used as a base to support this research include primary and secondary legal materials and methods. The analysis is in the form of a prescriptive method, namely an analytical method that provides an assessment (justification) about whether the object under study is right or wrong or what should be according to the law. The conclusion in this research is The modus operandi carried out by the Defendant who committed a Crime in the Immigration Sectors in Decision Number 713/ Pid. Sus /2022/PN Mks was by burning his passport and travel documents in 2019 because they wouldn't be detected as foreigner citizens and are considered an Indonesian citizens. Where the Defendant Mohammed Abdulaziz Khamis Bin Sanad's passport expired in 2020, but continued to live and carry out activities in Indonesian Territory without having a passport, namely from February to October 2021, the Defendant worked for a Mining Company at PT Sungai Berlian Mahakam in Samarinda. On January 15, 2022, the defendant went to Makassar city to look for coffee and would export the coffee to Arabia. 2) The judge's legal considerations in imposing a sentence on the perpetrator of a crime in the field of immigration, as in Decision Number 713/ Pid.Sus /2022/PN Mks, where the Panel of Judges have handed down a decision on the Defendant by giving a prison sentence of 4 (four) months and 15 (fifteen) days and a fine of IDR 10,000,000.00 (ten million rupiah). The decision of the Panel of Judges takes into account the facts revealed in the trials, and basically, the judge handed down the decision based on Law number 48 of 2009 concerning Judicial Power by paying attention to juridical and non-juridical considerations by paying attention to things that are aggravating and mitigation the Defendant.

Keyword: Crime, Immigration, Judge's Consideration.

INTRODUCTION

Indonesia is a sovereign country consisting of the people or residents, who are generally said to be state members. The people have a special position towards their country, which is one of the elements that fulfills the criteria of a country. Where in the 1945 Constitution of the Republic of Indonesia (from now on written the 1945 Constitution of the Republic of Indonesia) in Article 26 paragraph (1) states that "those who become citizens are the people of the Indonesian nation and people of other nations as authorized by law. act as citizens."

Residents who live in a country from a legal perspective consist of citizens and foreigners who are native residents of one country's territory, people who are not Indonesian citizens, not native Indonesia, or Indonesians who have renounced their citizenship and are currently in the territory of Indonesia. , treated as a foreigner (Muhlisa & Roisah, 2020).

In the era of globalization and free trade, human traffic has increased. This phenomenon has become a concern for countries, including Indonesia, because every country has the sovereignty to regulate the traffic of people entering and leaving their territory. The impacts that usually arise from globalization are narcotics trafficking between countries, acts of terrorism that threaten world security and order, human trafficking, money laundering, and illegal immigrants. Crime can threaten the sovereignty of the Indonesian state itself (Sanusi, 2017).

To minimize these negative impacts, both Indonesian citizens and foreigners are leaving, entering, and living in Indonesian territory; an institution is needed that regulates issues related to the entry and exit of people into Indonesian territory. In Indonesia itself, the one who governs this is the Immigration Office;

The Immigration Office is the agency that has the authority to carry out immigration inspection duties, such as granting entry permits or refusing entry to foreigners into a country, setting arrival limits (length of time for foreigners to arrive), and confirming to foreigners what is permitted and what is not. (Muhlisa & Roisah, 2020) . The legal basis governing the entry and exit of foreigners in Indonesian territory is regulated in Law Number 6 of 2011 concerning Immigration. The birth of this law was carried out to limit legal actions by foreigners in the countries where they are located (Hamidi & Christian, 2021).

Foreigners who will enter and reside in Indonesia are regulated in Article 48 paragraph (2) of Law Number 6 of 2011 concerning Immigration, which expressly states that: "Stay permits are given to foreigners in accordance with the visa they have."

Misusing a residence permit is a legal incident that still frequently occurs in immigration crimes. Residence permits given to foreigners to stay in the territory of Indonesia should be used more by those holding these permits so that there are still frequent cases of misuse of residence permits by foreigners.

One of the cases related to immigration crimes in Makassar City was the case of illegal immigrants, as contained in the Makassar District Court Decision Number 713/ Pid. Sus /2022/PN Mks. The immigration crime was carried out by a Yemeni citizen named Mohammed Abdulaziz Khamis Bin Sanad. This illegal immigrant entered Indonesian territory using a multiple-visit visa, the last time he entered Indonesia was on July 25, 2018, and he had to leave Indonesia before September 23, 2019, but in September 2019, Mohammed Abdulaziz Khamis Bin Sanad burned his travel documents with the aim that no one would know that the defendant was a foreign citizen with Yemeni nationality, the passport used by Mohammed Abdulaziz Khamis Bin Sanad's entry into Indonesia was last issued in 2014 at the Yemeni Embassy and the passport expired in 2020.

However, Mohammad Abdulaziz Khamis Bin Sanad was still in Indonesian territory in February 2021, namely in Samarinda, to work for the mining company PT. Mahakam Diamond River and in 2022, Mohammed Abdulaziz Khamis Bin Sanad went to Makassar City to look for coffee. It will export coffee to Arabia, so that on January 22, 2022,

Mohammaed Abdulaziz Khamis Bin Sanad was detained by immigration authorities. The Defendant's actions violated the provisions of Article 122 paragraph (1) letter a of Law Number 6 of 2011 concerning Immigration, which reads:

"Every foreigner who deliberately misuses or carries out activities that are not in accordance with the aims and objectives of the Stay Permit granted to him or her shall be punished with imprisonment for a maximum of 5 (five) years and a fine of a maximum of IDR 500,000,000.00 (five hundred million rupiah) ”.

The influx of illegal immigrants in Indonesia leaves a negative impact on the political, social-cultural, and security fields, so law enforcement against illegal immigrants is very important.

METHOD

The type of research in this research is included in normative legal research as one of the research for future legal needs. Normative legal research, or library legal research, is a method or method used in legal research with existing library materials (Soekanto & Mamudji, 2009).

The approach method in this research is the statutory regulations approach (*statute approach*), which can be done by reviewing all statutory regulations relating to the researched legal issue (Marzuki, 2008). Apart from the statutory approach (*statute approach*), the author also uses a case approach (*approach*) where this approach is carried out by examining and studying a case related to the problem (legal issue) being researched; the main point of the study is the judge's legal considerations (Muhaimin, 2020).

The research materials that will be used to support this research are data obtained from library research) from official documents, books, literature, notes, and statutory regulations related to the research object. The secondary legal materials used in this research are divided into;

1. Primary legal materials

Primary legal materials are materials that have permanent and binding legal force and are authoritative in the form of statutory regulations relating to issues, including:

- a. Constitution of the Republic of Indonesia;
- b. Law Number 6 of 2011 concerning Immigration

2. Secondary legal materials

Secondary legal materials are legal materials that explain primary legal materials used in legal research, including books, scientific works, papers, articles, and so on related to the problems being studied.

The legal materials obtained were obtained using a literature study method. The collection of legal materials was carried out by searching primary, secondary, and tertiary legal materials. This literature research will explain using qualitative methods, namely carrying out descriptive descriptions of literature books and electronic media collected on problems related to this research.

Analysis of the results of this research is carried out by criticizing, supporting, or providing comments, then making a conclusion on the results with your thoughts and the help of a literature review. The analytical method for this type of normative legal research is prescriptive, which provides an assessment (justification) about whether the object under study is right or wrong or what should be according to the law.

RESULT AND DISCUSSION

Modus Operandi of Criminal Offenses in the Immigration Sector (Study Decision Number 713/ Pid.Sus /2022/PN Mks)

The realization of a rule of law state by the 1945 Constitution requires legislation that upholds human rights and guarantees that every citizen has equal status under the law and

government and is obliged to enforce the law and government without exception (Wisnubroto & Widiatama, 2005).

The 1945 Constitution states that citizens are native Indonesian people and people from other nations who are legalized by law as citizens and residents are Indonesian citizens and foreigners residing in Indonesia. For foreign citizens who will come on holiday and stay in Indonesia, law enforcement has been regulated in Law Number 6 of 2011 concerning Immigration (Taekedangan et al., 2021).

The enactment of the law on immigration, which is an immigration regulation covering the movement of people entering or leaving the territory of Indonesia, is the right and authority of the Republic of Indonesia and is one manifestation of its sovereignty as a legal state based on Pancasila and the 1945 Constitution (Mohede, 2011). With the increasing movement of people and relations between nations and countries, there are increasing opportunities for criminal acts in the immigration sector.

Criminal acts violate prohibitions regulated in legal regulations that are threatened with criminal sanctions (Suharto, 2002). If we look at criminal law, there are three main issues, namely:

1. Prohibited acts;
2. The person (corporation) who commits the prohibited act;
3. The punishment threatened and imposed on people (corporations) who violate this prohibition;

The term criminal act refers to the meaning of a person's behavior and physical movements. In these cases, there is also a person who does not act, but by not doing so, he has committed a criminal act (Prasetyo, 2019). Furthermore, according to Jonkers, "a criminal act is a criminal event which is defined as an act that is against the *wederrechtelijk* law which is related to the intention or mistake committed by the person responsible."

An act is said to be a criminal act or behavior that violates criminal law only if an existing criminal provision determines that the act is a criminal act. This relates to the provisions in Article 1, paragraph 1 of the Criminal Code, which states that "No act can be punished unless it is based on criminal provisions in legislation that existed before the act was committed."

From the legal perspective, the perpetrator of a criminal act is someone deemed to have violated legal rules and must be punished. However, it is also necessary to know about the standards determining whether someone can be treated as a criminal.

Perpetrators of criminal acts usually use various methods to commit crimes; this is generally known as *modus operandi*. *Modus operandi* within the scope of crime are the techniques or methods of operation used by criminals to carry out evil acts that violate the law and harm other people before, during and after the criminal act is committed (Munandar, 2021).

Modus operandi , depending on the skill of the criminal. The more complex the *modus operandi* of criminals indicates that the criminals are experienced in committing crimes. The *modus operandi* can be seen from the nature of a person who commits a crime, whether the person actually committed the crime or whether the perpetrator only committed a mistake that fulfills the elements of the law (Munandar, 2021).

Likewise, criminal acts in the immigration sector can be committed by individuals or corporations who can falsify letters, documents, travel documents, or other objects related to immigration crimes. As is known, in immigration traffic, documents and travel documents are required. This is based on the provisions that apply in each country.

Every country has rules regarding incoming and outgoing human traffic. Apart from being required to have a passport or travel document, you must also have a visa (Hamidi & Christian, 2021). In immigration practice, every foreigner who enters or is in the territory of Indonesia is obliged to have a valid and still valid visa, which is granted by an authorized

official containing approval for foreigners who wish to travel into the territory of Indonesia and is the basis for granting a residence permit, and is required to go through the stages of checking personal identity by immigration officers.

Based on the provisions of Article 1 Paragraph 18 of Law Number 6 of 2011 concerning Immigration, it is confirmed that:

"Visa is a written statement given by an authorized official at the Representative Office of the Republic of Indonesia or elsewhere determined by the Government of the Republic of Indonesia which contains approval for foreigners to travel to Indonesian Territory and is the basis for granting a residence permit."

From this definition, it can be interpreted that a visa is useful as a person's residence permit to enter Indonesian territory. To make it easier for every foreign citizen who will come to Indonesia, the Government of the Republic of Indonesia issued Presidential Regulation Number 21 of 2016 concerning Free Visit Visas, which contains the granting of free visit visas to 169 other countries (Kurnia, 2018) . It is hoped that granting a visa-free policy to certain countries will have a reciprocal impact on Indonesia.

If the government is not selective in granting visit visas, it has the potential to increase the number of foreign tourists. It indirectly also has the potential for negative impacts, namely immigration violations such as making it easier to smuggle people or illegal workers, free drug trafficking, and abuse of the visa-free policy, by foreigners.

Authorized officials can follow up any misuse of visit visas by foreigners. Foreigners who commit an immigration violation can be given 2 (two) types of action, including :

1. Criminal legal action is the process of resolving immigration cases through the judicial stage, the implementation of which is carried out according to the provisions of the Criminal Procedure Code.
2. Legal actions are actions that have been determined by immigration officials who have the authority to handle immigration administration violations against foreigners outside the judicial process (Nugroho, 2016) .

Handling an immigration crime through a judicial process, also called pro-justice action , is included in the criminal justice system. Projusticiary action is given to foreigners who commit criminal acts or immigration violations, carried out by investigating suspects and evidence related to the immigration crime committed, taking first action at the scene, carrying out quarantine actions against foreigners, carrying out searches, confiscation, and examination of places, objects, documents, letters relating to immigration crimes, summoning witnesses and suspects, accompanied by the preparation of minutes of every legal action taken (Sanusi, 2017) .

Suppose a foreign citizen is caught red-handed committing an immigration crime or an immigration crime related to another crime. In that case, the investigator can directly take action as regulated in KUHAP Article 5 paragraph (1) letter b, namely:

1. arrest, prohibition from leaving the place, search and confiscation;
2. inspection and confiscation of letters;
3. taking fingerprints and photographing a person;
4. bring and present someone to investigators

The sanctions for legal action given to foreigners who commit immigration violations are divided into 2 (two) types of sanctions: administrative and criminal. Administrative sanctions in the form of immigration administrative actions which include inclusion in the prevention or deterrence list; restrictions, changes or cancellation of Stay Permits; prohibition on being in one or several certain places in Indonesian Territory; the requirement to reside in a certain place in the Indonesian Territory; imposition of burden fees; and deportation from Indonesian Territory. Meanwhile, criminal sanctions are in the form of imprisonment and/or fines as regulated in Article 113 to Article 136 of Law Number 6 of 2011 concerning Immigration (Putra, 2019) .

The imposition of criminal sanctions against perpetrators of immigration crimes aims to enforce immigration provisions and strive to prevent and eradicate unlawful acts that can harm the state and society. The current implementation of prison sanctions and fines has not been able to be comprehensive, and effective and provide a deterrent effect for perpetrators and other people who do not imitate the same actions to suppress criminal acts in the immigration sector.

There are many modus operandi used by foreigners to be able to live in Indonesian territory. Where currently, many immigration violations occur due to the impact of the presence of foreigners, the large number of foreign workers abusing residence permits, overstaying, illegal immigrants, the use of fake travel documents, *cybercrime*, and so on.

Violations often committed by foreign nationals visiting Indonesia are visits that exceed the time limit; even though foreign nationals visiting Indonesian territory have a permit, this cannot be separated from the predetermined period of stay, namely 60 (days) from the date of granting the permit. Entry often happens when foreigners exceed the specified time limit (Rahmadea et al., 2023).

One of the cases of misuse of a residence permit occurred within the scope of the Makassar District Court with Case Number 713/ Pid. The Defendant Mohammed Abdulaziz Khamis Bin Sanad committed Sus /2022/PN Mks. The Defendant has been declared guilty and has permanent legal force, where the modus operandi or method of the Defendant committing immigration crimes was discovered. The defendant entered the territory of the Republic of Indonesia using the modus operandi, namely, burning his passport and travel documents in 2019 because he would not be detected as a foreign citizen and be considered an Indonesian citizen. Where is the passport belonging to Defendant Mohammed Abdulaziz Khamis Bin Sanad, which expired in 2020 but continued to live and carry out activities in Indonesian territory without having a passport, namely from February to October 2021? The defendant worked for a mining company at PT Sungai Berlian Mahakam in Samarinda, then on January 15, 2022 The defendant went to Makassar city to look for coffee and would export the coffee to Arabia.

Judge's Legal Considerations in Handing Down Decision Number 713/ Pid.Sus /2022/PN Mks

A judicial process ends with a final decision in which criminal sanctions are imposed on the guilty defendant. In that decision, the judge states his opinion about what has been considered and what constitutes his decision. There are stages that must be carried out before reaching this stage, namely the evidentiary stage in convicting the defendant.

The judge's decision is the final action of the judge in the trial to determine whether the perpetrator will be punished or not, so the judge's decision is a statement from a judge in deciding a case in the trial and has permanent legal force. Based on the theoretical vision and judicial practice, the judge's decision is "a decision pronounced by the judge because of his position in a criminal case trial which is open to the public after going through the process and procedures of criminal procedural law which generally contains a verdict of punishment or acquittal or release from all legal charges made in written form with the aim of resolving the case" (RD Pakpahan et al., 2019) .

Law Number 48 of 2009 concerning Judicial Power fully guarantees the principle of judges' freedom in Indonesia. It is formulated that judicial power is the power of an independent state to administer justice and uphold law and justice. The freedom of judges contextually has 3 (three) essences in exercising judicial power, which consist of: (Rifai, 2011)

1. Judges only obey the law and justice;
2. No one, including the government, can influence or direct the decision that the judge will hand down;

3. There are no consequences for the judge's personality in carrying out his judicial duties and functions;

When deciding, judges make various considerations, both juridical and non-juridical considerations. The judge carries out juridical considerations based on the factors revealed at the trial, namely the public prosecutor's indictment, witness statements, evidence, the defendant's statement, and articles contained in criminal law regulations. Meanwhile, non-juridical considerations are based on the Defendant's background, the consequences of the Defendant's actions, the Defendant's condition and the Defendant's religion. The judge's decision cannot be separated from these considerations (Sarmawati, 2022).

Judges, in deciding a court hearing, can consider several aspects, namely the guilt of the perpetrator of the crime, the motive and purpose of committing the crime, the method of committing the crime, the inner attitude of the perpetrator of the crime and the life and socio-economic history, attitudes and actions of the perpetrator after committing the crime. Criminal acts, the crime's influence on the perpetrator's future, and the public's view of the criminal acts committed by the perpetrator (Arief, 2001).

The following are the Judge's considerations in handing down decision Number 713/Pid. Sus /2022/PN Mks, where the Defendant was presented at trial based on alternative charges, violating Article 119 paragraph (1) of Law Number 6 of 2011 concerning Immigration or Article 122 letter (a) Law Number 6 of 2011 concerning Immigration. Based on the facts revealed at the trial and according to the Panel of Judges' careful consideration, Article 122 letter (a) of Law Number 6 of 2011 concerning Immigration is different from the demands of the Public Prosecutor, where the Public Prosecutor demands that the Defendant violate Article 119 paragraph (1) Law Number 6 of 2011 concerning Immigration. The elements in 122 letters (a) of Law Number 6 of 2011 concerning Immigration are as follows:

1. Everyone's element

What is meant by every person is the legal subject of a criminal act, and he or she is capable of being responsible for their actions according to the applicable law.

Considering that the Defendant, MOHAMMED ABDULAZIZ KHAMIS BIN SANAD, is a person accused of being the perpetrator of a crime, the Defendant has admitted and confirmed his identity in the indictment of the Public Prosecutor and the Defendant is a competent person and can take responsibility for his actions, thus the elements of each person have been fulfilled ;

2. Elements who deliberately abuse or carry out activities not by the aims and objectives of the residence permit granted to them.

Considering that the meaning of this element is a situation where, due to his actions, the Defendant is conscious and aware of what he has done, namely deliberately misusing or carrying out activities not by the aim and purpose of granting the residence permit. Defendant can visit several times on a trip but does not use the visa.

Considering that every time the defendant enters Indonesia, the defendant receives a residence permit for 60 (sixty) days, and it cannot be extended. Thus, the defendant must leave Indonesia and then enter again to obtain a residence permit for another 60 (sixty) days. The defendant last entered Indonesia on July 25, 2018, and must leave Indonesia before September 23, 2019.

Considering that in September 2019, the defendant had an unregistered marriage with an Indonesian citizen, namely the witness WARDAH, and the defendant burned his passport with the aim that no one would know that the defendant was a foreign citizen with Yemeni nationality. That from February to October 2021, the defendant went to Samarinda to work at the PT Mining Company. Sungai Berlian Mahakam, and on January 15, 2022, the defendant went to Makassar City to look for coffee and would export coffee to Arabia. Based on the facts mentioned above, this element has been proven legally and convincingly according to the law.

The sentencing of perpetrators must look at the mistakes committed. This is based on the principle of error. The terms of punishment in a decision depart from two fundamental pillars, namely the principle of legality, a societal principle, and the principle of guilt, a humanitarian principle (Arief, 2001).

Before the Panel of Judges issues a decision on the Defendant, the Panel of Judges first considers the circumstances that could influence the crime by being guided by the contents of Article 8 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which confirms that "in considering the severity of the crime, the judge is obliged to "Also pay attention to the good and evil characteristics of the Defendant." The following considerations aggravate and mitigate the Defendant in Decision Number 713/ Pid. Sus /2022/PN Mks, namely:

1. Aggravating circumstances: The Defendant's actions are contrary to the government's efforts to enforce law in the immigration sector;
2. Extenuating circumstances;
 - a. The defendant admits and regrets his actions;
 - b. The defendant is polite during the trial;
 - c. The defendant has never been convicted;
 - d. The defendant has a small child aged 1 year;

Based on the judge's considerations, the Panel of Judges sentenced the defendant to imprisonment for 4 (four) months and 15 (fifteen) days and a fine of Rp. 10,000,000.00 (ten million rupiah) with the provision that if the fine is not paid, then replaced by imprisonment for 15 (fifteen) days and the Panel of Judges did not grant the demands of the Public Prosecutor, namely imprisonment for 5 (five) months and a fine of Rp. 10,000,000.00 (ten million rupiah) provided that the fine was not If paid, it will be replaced by imprisonment for 1 () month.

In imposing the crime, the Panel of Judges is based on valid evidence as regulated in Article 183 of the Criminal Procedure Code so that the Panel of Judges is confident that the criminal act charged occurred and it was the Defendant who committed it.

The fact that at trial, the Defendant does not have reasons to erase the crime means the Defendant must be held accountable for his actions, accept all punishments, and pay a predetermined fine. The judge's considerations are the things that form the basis or consideration of the judge in deciding a criminal case (Pakpahan, 2019).

In decision 713/ Pid. Sus /2022/PN Mks, the decision-making process carried out by the Panel of Judges was by applicable legal rules, namely based on valid evidence such as evidence, witness statements, and statements from the Defendant. Then consider that when committing his actions, the Defendant was aware of the mistakes and immigration violations he had committed.

In their decisions, judges need to assess all aspects of a juridical and non-juridical nature so that the justice that will be achieved can be realized and accounted for. The basis of the judge's considerations when deciding a case has an important role in the decision because the panel of judges considerations are the arguments that become the basis or material in analyzing the law to determine the decision for the defendant. The more precise the considerations used by the judge, the greater the extent of justice that the judge has in making a decision.

CONCLUSION

Based on the results of the research and discussion discussed in the previous chapter, the author draws the following conclusions:

1. The modus operandi carried out by the Defendant who committed a Crime in the Immigration Sector in Decision Number 713/ Pid. Sus /2022/PN Mks was by burning the passport and travel documents he had in 2019 because he would not be detected as a

- Foreign Citizen and be considered as a foreign citizen. Indonesian citizens. Where is the passport belonging to Defendant Mohammed Abdulaziz Khamis Bin Sanad that expired in 2020 but continued to live and carry out activities in Indonesian territory without having a passport, namely from February to October 2021? The defendant worked for a mining company at PT Sungai Berlian Mahakam in Samarinda, then on January 15, 2022 The defendant went to Makassar city to look for coffee and would export the coffee to Arabia. So, the Defendant's actions violated the provisions of Article 122 letter a of Law Number 6 of 2011 concerning Immigration.
2. The judge's legal considerations in imposing a sentence on the perpetrator of a crime in the field of immigration are as stated in Decision Number 713/ Pid. Sus /2022/PN Mks, where the Panel of Judges has handed down a decision on the Defendant by giving him a prison sentence of 4 (four) months and 15 (five) fifteen) days and a fine of IDR 10,000,000.00 (ten million rupiah). The decision of the Panel of Judges took into account the facts revealed in the trial, and basically the judge handed down the decision based on Law number 48 of 2009 concerning Judicial Power by paying attention to juridical and non-juridical considerations by paying attention to things that aggravate and mitigate the Defendant.

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