



PRINCIPLES OF SELECTIVE IMMIGRATION POLICY IN RELATION TO VISA FREE ENTRY FOR TOURISM PURPOSES

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ABSTRACT

Tourism has an important role in enhancing the economic growth of a country. As a country with growing tourism industry, Indonesia is trying to increase foreign tourist visits by rolling out a visa-free policy. However, the visa-free policy has not yet fully provided benefits. In practice, this policy triggers the occurrence of transnational and international crimes, the rise of illegal foreign workers and the large number of foreigners who abuse their residence permits. The purpose of this research is to analyze the visa-free policy from the perspective of selective policy theory. The research method is normative legal research with a statutory approach and a conceptual approach. The results of the study show that the visa-free policy as contained in Presidential Regulation Number 21 of 2016 is not fully based on the theory of selective policy. In conclusion, the visa-free policy cannot be implemented optimally because the formulation of this policy does not represent the theory of selective policy. Consequently, the implementation of visa-free policy generates various matters that have an adverse impact on Indonesia. In order to overcome this problem, it is urgent to evaluate and improve the visa-free policy and to make this policy truly based on the theory of selective policy. Thus, the visa-free policy will be very selective in choosing and determining countries that can receive a visa-free policy.

Keywords: tourism; visa-free policy; selective policy theory

INTRODUCTION

Background

Tourism is a strategic sector in increasing a country's foreign exchange reserves so it is used as the main sector in elevating a country's economic growth.¹ Between 2017 and 2019, tourism sector has significantly raised the

number of foreign exchange reserves. Considering this fact, tourism certainly can give a contribution in economic development and job creation. The benefits received by the state through foreign tourists' visits are not immediately eliminating the negative impacts of foreigners visiting Indonesia.

1 Helmi Aliansyah and Wawan Hermawan, "Peran Seurism Sector in Regency/City Economic Growth in West Java," *Economic Development* 23, no. 1 (2021): 39–55.

Table 1.
The Amount of Foreign Exchange Obtained
from Tourism Sector (US \$)

Region	Foreign Exchange Amount from Tourism Sector (Billion US\$)			
	2017	2018	2019	2020
Indonesia	13.139	16,426	16.9	3.2

Source: Bank Indonesia

Immigration policy must put balance between welfare and safety. In other words, the state must show efforts to increase citizens' welfare and at the same time protect the safety and integrity as a nation and state. Approach that can be used for determining policy for foreign arrivals are stated as follows:²

1. Welfare Approach, this approach is done by giving permission of entry and being in the territory of Indonesia to foreigners who are beneficial for the Indonesian people's prosperity and welfare.
2. Security Approach, this approach is done by giving permission of entry and being in the territory of Indonesia only to foreigners who will not endanger the state security.

Based on Article 1 Point 3 of Law Number 10 of 2009 concerning Tourism (or later abbreviated as the Tourism Law), tourism is defined as a variety of tour activity supported by various services and facilities provided by the community, government, and entrepreneurs. Explanation of tour available in tourism definition has been outlined in Article 1 Point 1 of the Tourism Law. Based on this definition, tours are interpreted as trip activities conducted by an individual or a group of people which are going on for a

² Wahyudin Ukun, *Deportasi Sebagai Instrumen Penegakan Hukum Dan Kedaulatan Negara Di Bidang Keimigrasian* (Jakarta: PT. Adi Kencana Aji, 2004). h. 8

temporary period.³ Definition of tourism which is commonly associated with travel activity indeed involves the existence of international travelers' mobility.

The mobility of foreign travelers in and out of a country's territorial boundaries becomes a scope arranged in immigration law. Immigration in Indonesia's positive law can be found in Law Number 6 of 2011 concerning Immigration (later abbreviated as the Immigration Act). Globalization and modernization make it easy for humans to travel outside their country's borders. It causes the cross-national borders are no longer seen as barriers. The intertwined connection between humans at international level demands equality of human rights. This background becomes an underlying factor of the Immigration Law establishment which highly upholds respect for human as well as an acknowledgment of basic rights that are universally attached to every human.⁴

The immigration law in Indonesia requires the ownership of legal and valid travel documents as a condition that must be met by everyone who will travel to Indonesia. In addition, it obliges the ownership of a visa for foreign nationals who want to enter Indonesian territory, except if the Immigration Act and Treaties international determine otherwise.⁵ Visas as explained in Article 1 Point 18 of the Immigration Law are defined as documents which explain in writing that foreigners have obtained permission from a representative of Indonesian authorized officials or other representatives that have been appointed by

³ Government of the Republic of Indonesia, *Law Number 10 of 2009 concerning Tourism*, 2009.

⁴ M Alvi Syahrin and Setiawan Saputra, "Tindakan Hukum Terhadap Orang Asing Mantan Narapidana Yang Memiliki Kartu Pengungsi Unhcr Dalam Perspektif Keimigrasian (Legal Actions On Ex-Convict Refugee Cards From The Immigration Point of View)," *Scientific Journal of Legal Policy* 13 , no. 2 (2019): 139–164.

⁵ Government of the Republic of Indonesia, *Law Number 6 of 2011 concerning Immigration*, 2011.

the government of the Republic of Indonesia in order to enter Indonesian territory. Visas will become legal proof for foreigners to obtain permission to stay in Indonesia. The ownership of permission to stay issued by the immigration officials or foreign service officials becomes legal basis for the presence of foreigners in Indonesia, both for doing diplomatic or non-diplomatic duties and for visiting Indonesia in order to travel.⁶

Indonesia which has mesmerizing natural scenery and diverse cultures and customs becomes a magnet that can attract travelers overseas to do tourism activity in Indonesia.⁷ As a strategic step for increasing foreign traveler visits, the government of Indonesia issued visa-free policy.

Visa-free policy basically has been mentioned in the Immigration Law, particularly in Article 43 Paragraph (1) and Paragraph (2) Point a. It states that visa-free policy is set according to Presidential Regulation.⁸ Based on this situation, there is an issuance of Presidential Regulation Number 21 of 2016 on the Visit Visa Exemption (or later abbreviated as Presidential Regulation Number 21 of 2016). Visa-free policy enables foreign nationals from certain countries to easily enter Indonesia without being burdened by obligations of visa ownership. Foreigners with visa-free convenience are those who come from 169 countries that have been chosen in Presidential Regulation Number 16 of 2021 as the recipient of visa-free policy. Foreigners from those countries can enter Indonesian

territory without having a visa.

Visa-free policy makes it possible for foreigners to enter Indonesian territory and at the same time brings consequences to the security aspects of the country which becomes very vulnerable.⁹ Lots of foreigners passing by results in susceptibility to transnational crimes and international crimes such as smuggling narcotics, terrorism, human trafficking and illegal immigrants.¹⁰ In addition, visa-free policy has not yet been implemented in accordance with the principle of utility and reciprocity as mandated in the Immigration Law. There are negative effects that arise as a consequence of the implementation of visa-free policy. They include the occurrence of transnational organized crime and law violations. In addition, several countries have accepted visa-free convenience from Indonesia but those countries do not give the same treatment of issuing visa-free policy to Indonesian citizens.¹¹ The problem that exists from the emergence of negative impacts of visa-free policy needs to be evaluated and the Presidential Regulation Number 21 of 2016 needs to be improved.

In 2019, Corona Virus Disease 2019 or Covid-19 occurred in almost every countries in the world.¹² The number of deaths caused by Covid-19 infections to humans increased and expanded. It does not only occur across

6 Ridwan Arifin and Intan Nurkumalawati, "Kebijakan Pemeriksaan Keimigrasian Di Indonesia: Bentuk Pelayanan Publik Dan Profesionalisme Petugas Imigrasi," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 243-262.

7 Aisyah Nurannisa Muhlisa and Kholis Roisah, "Penegakan Hukum Keimigrasian Terhadap Penyalahgunaan Visa Izin Tinggal Kunjungan Lewat Batas Waktu (Overstay) Pada Warga Negara Asing," *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2020): 145-157.

8 Government of the Republic of Indonesia, Law Number 6 of 2011 concerning Immigration.

9 Wicipto Setiadi and Rakha Aditya Afrizal, "Implikasi Kebijakan Bebas Visa Berdasarkan Peraturan Presiden Tentang Bebas Visa Kunjungan: Perspektif Ketenagakerjaan," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 3 (2019): 311.

10 M. Alvi Syahrin, "Menakar Kedaulatan Negara Dalam Perspektif Keimigrasian (Assessing State's Sovereignty from the Perspective of Immigration Affairs)," *Jurnal Penelitian Hukum De Jure* 18, no. 1 (2018): 43-57.

11 Nuke Listiyawati, "Analisis Pemenuhan Asas Resiprokal Dan Manfaat Dalam Perpres Nomor 21 Tahun 2016," *Reformasi Hukum Trisakti* 2, no. 1 (2020): 1-10, <https://doi.org/10.25105/refor.v2i1.10527>.

12 Rizki Bagus Prasetyo, "Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat Dan Perlindungan HAM," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 327-346.

regions but also across countries resulting in public health emergency situation that ultimately influenced every aspect of life from political, cultural, economic, social aspects to national security aspect.¹³ This situation became the underlying basis of Presidential Decree Number 11 of 2020 on the declaration of the National Public Health Emergency Corona Virus Disease 2019/ Covid-19 (or later abbreviated as Presidential Decree Number 11 of 2020). Covid-19 transmission character is irregular. It resulted in the enactment of restrictions to the internal population mobility and also international mobility.¹⁴ Consequently, visa-free policy that involves intense mobility of foreigners has been discontinued for a temporary period. Temporary discontinuation of visa-free policy is arranged based on Regulation of the Minister of Law and Human Rights Number 34 of 2021 on the Issuance of Visa and Stay Permit during the Covid-19 Mitigation and National Economic Recovery Efforts (or later abbreviated as Permenkumham 34 of 2021). This regulation confirms that visa-free travel and visa on arrival are discontinued for temporary period until there is a declaration from the Government of Republic of Indonesia which states that the Covid-19 pandemic has ended.

Temporary termination of visa-free policy gives an opportunity for evaluation and improvement to the policy as stated in Presidential Regulation Number 21 of 2016. Evaluation and improvement to Presidential Regulation Number 21 of 2016 are done as an effort for maximizing the benefits that can be obtained from visa-free policy implementation.

13 Republik Indonesia, "Keputusan Presiden (Keppres) Nomor 11 Tahun 2020 Tentang Penetapan Kedaruratan Kesehatan Masyarakat Covid-19.," *Sekretariat Negara*, (2020): 1–2.

14 Desinta Wahyu Kusumawardani, "Menjaga Pintu Gerbang Negara Melalui Pembatasan Kunjungan Warga Negara Asing Dalam Mencegah Penyebaran COVID-19.," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2020): 517.

In addition, evaluation and improvement is done to avoid negative impacts from implementing visa-free policy that results in susceptibility to national security since this policy opens the gate for foreigners' entry to Indonesian territory.

This research does not only address the study of visa-free policy for tourism interest from the selective policy perspective but also addresses the formulation idea of visa-free policy in the future. Thus, visa-free policy does not only focus on the quantity of foreign travelers' visit, but also prioritizes the quality foreign travelers. By doing so, the implementation of visa-free policy truly brings benefit to the state and minimizes possible negative consequence that may happen.

Research Question

Referring to the description above, two questions can be formulated as follows:

1. How visa-free policy for tourism interests is seen from perspective of selective policy theory?
2. How is the improvement concept of the future of visa-free policy in tourism framework based on selective policy theory?

Objectives

This study was conducted with aims stated as follows:

1. To know visa-free policy for tourism interest if seen from perspective of selective policy theory;
2. To give description about the future of visa-free policy that is based on selective policy theory in immigration field.

Research Method

1. Approach

The type of research used in answering and solving problems is normative research. It is supported by a fact approach, namely tracing facts in the community related to the problem being studied. This research was

done by examining these facts using a statutory approach and using a statutory approach. In addition, this research also used a conceptual approach that uses theories and principles in reviewing and analyzing problems to strengthen the expressed scientific phenomena..¹⁵

2. Data Collection Method

Data collection was carried out using the literature review method. It was done by understanding the content of the material contained in the primary legal materials, namely the Immigration Law and Presidential Regulation Number 21 of 2016 and Regulation of the Minister of Law and Human Rights Number 8 of 2022 on Immigration Intelligence (or hereinafter abbreviated as Permenkumham No. 8 of 2022), as well as secondary legal materials in the form of legal journals, books, and legal literature related to the issues being studied.

3. Data Analysis Techniques

The analytical techniques applied to strengthen the framework of this research in compiling the construction of legal arguments are argumentative techniques and prescriptive techniques..

DISCUSSION

1. Visa Free Policy in the Perspective of Selective Policy Theory in Immigration Field

1.1 Selective Policy Theory

Immigration law governs all issues related to movements of everyone who wants to enter or go out from the territory of a country and it is derivative from state sovereignty concept which is related to how can the country maintains and keeps its sovereignty.¹⁶ This idea

becomes background of immigration law formation that regulates the entry and exit of foreigners to the territory of the state. It is attached to the state with consideration that immigration is *the last bastions of sovereignty*.

Hans Kelsen argues that territorial sovereignty gives authority to a country for doing its jurisdiction exclusively within its territory. Consequently, everyone who is in the territory of a country must obey and follow the power of the country as Hans Kelsen explains in *Huala Adolf* book.¹⁷ As the highest power, essential characteristic, and nature of a country over its territory, the sovereignty of a country which is total and absolute gives full authority to a country as the highest organization with power for selecting those who can go in and out from its territory.¹⁸

Indonesia has rights and power to define and arrange conditions in the immigration law as an embodiment of country's sovereignty based on law.¹⁹ Sovereignty gives the state rights and powers to have several authorities which include:²⁰

- a. Exclusive authority to arrange affairs domestically;
- b. Authority to case out and accept foreigners;
- c. A diplomatic representative in other countries with all exclusive rights; and
- d. Full legal authority towards crime committed within its territory.

15 Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: PrenadaMedia Grup, 2016), h. 160.

16 M Iman Santoso, *Perspektif Imigrasi Dalam United Nation Convention Against Transnational Organized Crime, Cet.1* (Jakarta: Perum

Percetakan Negara RI, 2007).

17 Huala Adolf, *Aspek-Aspek Negara Dalam Hukum Internasional* (Jakarta: PT. Raja Grafindo, 2002), h. 11.

18 Bilal Dewansyah, "The Development of Legal Policy and Legal Needs of Indonesian Immigration Law: Answered Partially, Forget the Rest," *Hasanuddin Law Review* 1, no. 2 (2015): 140–162.

19 Charles Christian dan Jazim Hamidi, *Hukum Keimigrasian Bagi Orang Asing Di Indonesia* (Jakarta: Sinar Grafika, 2016), h. 8.

20 M Iman Santoso, *Op cit.* 48

Immigration law does not merely become a set of regulations that governs movements of foreigners in and out of the territory of Indonesia. Immigration law also governs supervision and monitoring of foreign national existence in Indonesia in a framework of maintaining the state sovereignty. Immigration law closely related to a country's endurance in guarding its sovereignty. As a result, the Immigration Law contains provisions based on selective policy theory. In this policy theory, selective conditions hold important role in determining whether foreign nationals can or cannot travel in Indonesian territory.²¹

Selective policy theory becomes a universally applicable principle in all countries. Referring to this condition, selective policy must be respected since it is representation form of state sovereignty. Selective policy principle is used as a filter that selects arrival of foreigners to Indonesia. This principle has been stated in explanation part of the Immigration Law which becomes base for the country to forbid or allow anyone who wants to enter or go out from Indonesian territory. Selective policy as available in the Immigration Law requires conditions as follows:

- a. Only foreigners who bring benefits are allowed to be in Indonesian territory;
- b. Only foreigners who do not threaten the state's order and security are allowed to enter Indonesian territory;
- c. Foreigners who comply and are obedient to legal authority of the state; and
- d. Foreigners who enter and are in Indonesian territory must do what they aim to do and intended to do.

Apart from four requirements above, selective policy theory also determines that foreigners who are allowed to be in Indonesia are those who do not endanger the nation and do not contradict the state ideology.²² To

do so, the entry of foreigners to Indonesia will be selected based on immigration selective policy.

1.2 Visa-free Policy in its Relation with Tourism

Tourism sector brings such a massive influence to other sectors. Tourism is capable to stimulate existence of other sectors such as textile industry, agriculture, crafts, and horticulture industry. These new formed sectors have opened wide space for public to participate in various type of tourism activity, including in giving input or consideration to determine policies in the tourism field. One of policies is visa-free visit.

Visa-free visit policy is one of the government's policies in immigration field that makes foreigners gain easy access to be in Indonesian territory.²³ Visa-free entry policy is rolled out as a strategic step to increase the country 's economic growth through foreign exchange earnings.²⁴ Terms and conditions that arrange the existence of visa free policy normatively have been found in Article 43 paragraph (1) and paragraph (2) Point a of the Immigration Law. It states that visa-free policy is set based on Presidential Regulation. Because of this regulation, government later publishes Presidential Regulation Number 21 of 2016 as a derivative from of Article 43 of the Immigration Law.

The background of visa-free visit policy issuance is contained in preamble part that considers Presidential Regulation No. 21 of 2016. Essentially, it mentions that this policy has aims for making and strengthening relation

Akademik Rancangan Undang-Undang Keimigrasian, 2022.

23 Ahmad Jazuli, "Implementasi Kebijakan Bebas Visa Dalam Perspektif Keimigrasian," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 3 (2016): 211–225.

24 Muksalmina Muksalmina Yoni Basyir Wira W, Nurul Pratiwi I. A, "Pemberian Kebijakan Bebas Visa Oleh Pemerintah Indonesia Untuk 169 Warga Negara Asing," *Ilmiah Mahasiswa* 1, no. 2 (2021): 98–102.

21 Jazim Hamidi, *Op cit.* 76 .

22 Badan Keahlian Sekretariat Jenderal Dewan Perwakilan Rakyat Republik Indonesia, *Naskah*

with other countries as well stimulating the country 's economic growth through foreign travelers' visit. Visa-free policy is issued in a framework of increasing economic growth through tourism sector. This policy is held by taking notice of the principle of utilization and reciprocity.

The principle of reciprocity if linked with diplomatic law is the fundamental principle. Its existence is recognized by countries in the world as a reflection of international law values.²⁵ The principle of reciprocity means that other countries will give good treatment in return to a country as long as the good treatment is given first by the country.²⁶ Meanwhile, principle of utilization as intended in the Immigration Law contains meaning that visa -free visit policy is only given to foreigners who benefit Indonesia and do not threaten national integrity and security.

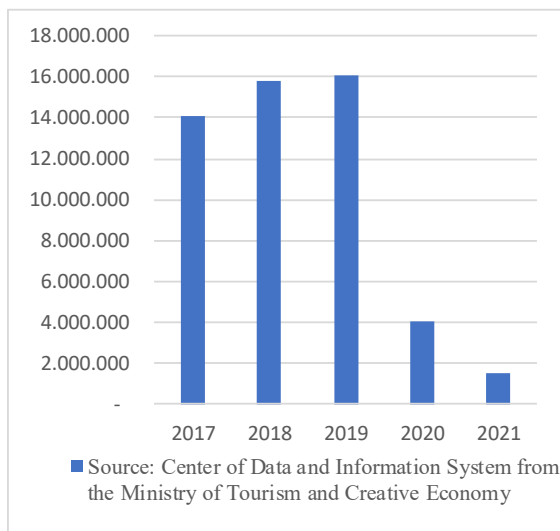


Table 1.

Foreign Traveler Visits
Foreign Traveler Visits Year 2017-2021
Based on statistical data of foreign

25 Wisnu Indaryanto et al., *Kedaulatan Indonesia Di Antara Virus Corona*, n.d., <https://www.cnnindonesia.com/internasional/20200217071500-113-475199/korban-meninggal-akibat-virus->

26 Adhika Putra Susilo, Herni Widanarti, and Aminah, "Aspek Asas Resporitas Dalam Pengakuan Sahnnya Perkawinan Campuran Antara Warga Negara Indonesia Dengan Warga Negara Asing," *Diponegoro Law* 6, no. 1 (2017).

traveler visit summarized by the Data Center and Information Systems of the Ministry of Tourism and Creative Economy, the implementation of visa-free policy is proven effective to increase the number of foreign tourist visits to Indonesia. Based on data on foreign traveler visits in 2018 and 2019, it shows that countries that become biggest contributor of foreign travelers to Indonesia are Malaysia, Singapore, China, Australia, Timor Leste, Japan, United States of America, England, and South Korea.

The irregular transmission of Covid-19 results in the enactment of population mobility restrictions. It includes the restriction of international mobility. Thus, this condition caused the number of travelers from overseas experienced a drastic decline in 2020. Moreover, after that, visa-free policy was discontinued for a temporary period. Temporary discontinuation of visa-free policy is based on Minister of Law and Human Rights Regulation Number 34 of 2021. It states that visit visa and visa-free policy is discontinued for temporary time until the issuance of a statement from the Government of Republic of Indonesia which states that the Covid-19 pandemic has ended. Despite international mobility restrictions, in 2020 and 2021, countries that became the biggest contributor of foreign travelers are Timor Leste, Papua New Guinea, China and Russia. Based on this situation, not all of 169 countries given visa-free convenience to Indonesia use this opportunity to visit the country.

1.3 Implication of Visa-free Policy Implementation

Visa free policy is used as a strategic step in increasing a country 's economic growth. It does not only bring positive impacts but there are negative sides brought as a consequence from implementing this policy. The negative impacts occur due to visa-free policy opens gate for foreigners to enter Indonesian territory and consequently puts

the state security in vulnerable situation. In the implementation, the visa-free policy also brings its own consequences, namely the emergence of various problems that can threaten state security, such as human trafficking, drug smuggling, terrorism, and violation of permission to stay.²⁷

The most frequent problems that occur from implementing visa-free policy are related with the violation of permission to stay and permission to work. A lot of foreigners violate visa-free policy by staying permanently in Indonesia or staying more than the time limit (overstay). Related to this, during 2018, the Migration Division of the Regional Office of the Ministry of Law and Human Rights, Central Java deported as many as 197 foreigners. Most of them are from China, Korea, and India. Deportation is conducted based on a condition that foreigners' permission to stay already ended and some of these foreigners violate immigration permission.²⁸

Meanwhile, a lot of foreigners travel by passing cross-national borders as if there are not any barriers between countries.²⁹

Violations and crimes committed by foreigners have become frequent cases. The existence of a policy that enables easy access for foreigners to enter Indonesia is often misused for violation and crime purpose in Indonesia.³⁰ Most frequent violations

conducted related to violation of immigration permission, such as the existence of foreign illegal workers who enter Indonesia.³¹ In addition, human trafficking criminal case involved travelers with Taiwanese national, namely Chiang Hung Wei and Chu Yu Hung. They are perpetrators of human trafficking crime happened in 2015. The two foreigners assisted 27 Taiwanese and Chinese nationals to enter Indonesia by using visa-free policy.³² Various forms of violation as well as crimes that happened indicate that visa-free policy is not yet fully implemented based on immigration selective theory. The implementation of visa-free policy does not come altogether with selective requirements and consequently the negative impacts are much higher than the positive ones.³³

For minimizing the negative impacts from foreigners who take advantage of visa-free policy, immigration officials have function as Immigration Intelligence. Their functions include investigation and securing activity as arranged in Permenkumham Number 8 of 2022. In Article 3 paragraph (3) Point b of the Minister of Law and Human Rights Regulation Number 8 of 2022, immigration officials are regulated to carry out activities based on the plan and directed order. It is done to prevent and/ or oppose every effort, work or activity that can harm interests and security in immigration sector.

27 Syahrin, "Menakar Kedaulatan Negara Dalam Perspektif Keimigrasian (Assessing States Sovereignty from the Perspective of Immigration Affairs)."
28 Infokim Wonosobo, "Imigrasi Jateng Deportasi 197 Orang Asing Selama 2018," *Divisi Keimigrasian Kantor Wilayah Kementerian Hukum Dan HAM Jawa Tengah*.
29 Ridwan Arifin and Intan Nurkumalawati, "Implementation Of The Clearance Settlement System For International Arrival And Departures Of Immigrationjuanda Surabaya," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 1 (2022): 61–78.
30 Trisapto Wahyudi Agung Nugroho, "Peran Intelijen Keimigrasian Dalam Rangka Antisipasi Terhadap Potensi Kerawanan Yang Ditimbulkan Oleh Orang Asing Di Wilayah Indonesia (Role of Immigration Intelligence in the Anticipation on Potential

Vulnerability Led by Foreigners in Indonesia)," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 3 (2018): 275-293.
31 Ahmad Jazuli et al., "Eksistensi Tenaga Kerja Asing Di Indonesia Dalam Perspektif Hukum Keimigrasian," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 1 (2018): 89–107.
32 Ahmad Mudhofarul Baqi, "Implikasi Kebijakan Bebas Visa Terhadap Kejahatan Perdagangan Manusia Di Indonesia," *Journal of International Relations Universitas Diponegoro* 4, no. 3 (2018): 479–488.
33 Mohammad Rizal et all Syahrini, "Jurnal Inovasi Penelitian," *Jurnal Inovasi Penelitian* 2, no. 1 (2021): 27–37.

The implementation of visa-free policy has not been fully capable giving maximum benefits. In addition, there is still low reciprocity of policy feedback received by Indonesia from other countries. The low reciprocity or principle of reciprocity is reflected by several countries that are given visa-free policy by Indonesia but they do not give the same treatment to make Indonesian citizen free from obligation to own a visa.

Considering this situation, Presidential Regulation Number 21 of 2016 which regulates visa-free policy needs improvement. It is because there are countries liberated from obligation to have a visa in this Presidential Regulation. However, they do not make Indonesian citizen free from obligation to own a visa. This situation is precisely on the contrary with explanation in Article 43 paragraph (2) Point a of the Immigration Law. Despite that, based on data from the Ministry of Tourism and Creative Economy in 2017, the countries with the biggest number of travelers to Indonesia are not dominated by the countries which are on the recipient list of visa-free policy.³⁴

The visa-free entry policy initially has aim for making the mobilization of targeted foreign travelers easier. However, in the implementation, it does not immediately give positive advantage to Indonesia. This situation refers to the occurrence of negative impacts inclined to cause disadvantages for Indonesia. These negative impacts cannot be ignored. For example, there are opportunities to do illegal actions, such as opposing law and committing cross national border crime such as human trafficking, terrorism, smuggling drugs and violation of permission to stay. Thus, the advantages from visa free entry policy becomes not optimal because

they are reduced by the negative impacts of this policy. It happens as a consequence of implementing visa-free that is not fully formed based on selective immigration theory. Visa free policy at first is issued to increase the country 's economic growth through foreign travelers' visit. However, in the end it will bring detrimental effects to the state if this policy is not completely formed based on selective policy theory. It is because without existence of selective policy theory, there are not any filters used for selecting foreigners who come to Indonesia.

2. The Concept of Improving Visa-Free Policy in the Context of Tourism Based on the Theory of Selective Immigration Policy

2.1 Sustainable Tourism

The quantity of foreign travelers is increased since the issuance of visa-free policy. This condition certainly must be accompanied by the good quality of traveler too. If visa-free policy prioritize quantity over quality, the implementation of this policy will bring more chance of giving dominant negative impact compared to the positive impact. Because of that, in order to maximize advantages of visa-free policy, this policy cannot be solely conducted based on selective policy theory but it is also done by developing sustainable tourism as a concept to realize fair public welfare. This concept does not only ensure the fulfillment of today 's generation but also guarantee future generation to be able to fulfill their own needs.

The existence of tourism sector cannot neglect the continuity of natural destination, archeology, history, culture and people. Creating balance of human welfare in natural, social and cultural environment becomes principle of tourism activities. To make tourism as the front line in realizing human welfare in general, there are steps that can be done by directing tourism that can spur job opportunity, generate economy, lower

34 Erdian, "Efektivitas Penerapan Kebijakan Bebas Visa Kunjungan Dikaitkan Dengan Selective Policy Keimigrasian Indonesia," *Kementerian Hukum Dan Hak Asasi Manusia*.

poverty, increase foreign exchange earnings, and empower society. However, in the development of tourism sector, it often brings more negative impacts than the positive ones. Economic profit from tourism activity, which should increase public welfare, in fact is only enjoyed by a small group of people. Moreover, tourism development causes commercialization distorting cultural values and causing pollution that brings destruction in environment, especially in the area of tourism destination.³⁵

Tourism activity that is done only to gain economic profit most of the time ignores social and cultural aspect. Marginalization of social-cultural aspect is caused by economic aspect that often being dominant and defeating social values. In addition, socio-cultural aspects can be difficult to be measured. Consequently, this qualitative character causes socio-cultural aspects do not become a part within the development parameters of success and eventually it results in socio-cultural aspects being more neglected.³⁶

To understand sustainable tourism as stated in *Report of the World Commission on Environment and Development: Our Common Future* 1987, sustainable tourism concept is done by developing long term development strategy of tourism environment to reach sustainable development. In addition, it can also be done by recommending strategies that environmentally friendly. These strategies can be translated as having more cooperation between developing countries and developed ones at different stages of economic and social aspect. By doing so, it is expected to lead to achievement of collective purpose and any other purposes that have reciprocal relationship between human, natural source, environment, and

development. Regarding the concept above, it can maximize positive impacts of tourism so tourism sector becomes capable of being the front line sector that realizes public welfare.³⁷ Sustainable development as what is intended in WCED means that development must be fair and does not only ensure the fulfillment of today's generation needs but also guarantee fulfillment of needs for future generation by sustainably inheriting the rich natural source.³⁸

Sustainable tourism development is held by referring to world tourism ethic codes.³⁹ Tourism Code of Conduct or Global Code of Ethics for Tourism (GCET) was adopted in 1999 by the United Nations General Assembly (UN). This code is described as tourism development principles that can minimize negative impact of tourism on culture and environment as well as maximizing tourism advantages by encouraging sustainable development. Tourism Code of Conduct works as a road map or guidance in realizing responsible and sustainable tourism sector. In this context, responsible tourism means that there will be responsible actions towards negative impacts from environmental, social, cultural, and economic aspects in the present and in the future.

Guidelines for sustainable tourism development and practical management are applied for all form of tourism in all type of destinations, including mass tourism and various segment of special tourism. Sustainable principle refers to the environmental, economic, and socio-cultural aspects from the development of tourism, and the appropriate balance must be built between these three dimensions to ensure

35 Nyoman Sunarta dan Nyoman Sukma Arida, *Pariwisata Berkelanjutan* (Denpasar: Cakra Press, 2017).

36 Gde Pitana dan Putu Gayatri, *Sosiologi Pariwisata* (Yogyakarta: CV Andi Offset, 2005).

37 Brutland. G, *Report of the World Commission on Environment and Development: Our Common Future.*, 1987.

38 Nyoman Sunarta dan Nyoman Sukma Arida, *Pariwisata Berkelanjutan*.

39 Wardianto dan M. Baiquni, *Perencanaan Dan Pengembangan Pariwisata* (Bandung: Lubuk Agung, 2011).

long term sustainability.⁴⁰ Sustainable tourism emphasizes tourism activity that must involve local community and the economic benefit must be shared fairly, specifically in job creation, social and cultural aspect. Tourism policies should be designed in such a way as to help the local community in the areas visited by tourists to improve their standard of living and fulfill their needs. The nature of tourism sustainability will be guaranteed if tourism is able to become the key in alleviating poverty. Thus, the ideal tourism is tourism that is able to:⁴¹

- a. Optimize the utilization of natural source as a strategic element in the development that accompanies tourism with the conservation of natural sources to ensure its sustainability in the future;
- b. Honor authenticity of socio-cultural aspect including intangible cultural heritage;
- c. Ensure continuity of economic cycle in long period and fair distribution of socio-economic benefits to all parties involved in tourism, able to create a stable employment and be able to alleviate poverty.

In essence policy development tourism based on philosophy tourism must based on ideology nation namely Pancasila and the 1945 Constitution of the Republic of Indonesia as step strategic. In order to get realize development tourism with carry draft balance live. In terms of this linkages Among policy selective with tourist sustainable that is with existence policy visa - free policy based selective of course will capable for selecting traveler incoming foreignerto Indonesia. Policy no visa-free as well as immediately addressed for increase visit traveler the only foreigner quantity oriented just but

capable bring traveler qualified foreigner who canbring profit for the country 's economy through policy selective that Remember that existence quality traveler visiting foreigners will capable push enhancement quality development sustainable Indonesian tourism that is with carry draft balance life Becomes score base for Indonesian nation for give birth to norm Indonesian tourism based on tourism based on society , culture and environment . This thing only will come true when there is role and support traveler qualified foreigner, so that the points main for increase quality tourist sustainability in Indonesia is policy selective traveler incoming foreigner or visit Indonesia, isn't it? on the contrary that is give very free freedom to traveler foreign with take effect policy visa -free visit without apply and consider theory policy selective as well as destination nor draft base tourist sustainable

Essentially, tourism development policies that are based on the philosophy of tourism must be done according to the nation's ideology, namely Pancasila and the 1945 Constitution of the Republic of Indonesia as strategic steps. It is done to make tourism development by carrying out the concept of balance of life. In the case between selective policies and sustainable tourism, there is the existence of a visa-free policy that is based on selective principles. By adopting selective principles, this policy will certainly be able to filter foreign travelers who enter Indonesia. The visa-free policy is not necessarily aimed at increasing foreign tourist visits, which are only quantity-oriented, but rather it is able to bring in good quality foreign tourists who are able to give benefits to the country's economic growth. By doing so, foreign tourists visiting Indonesia will be able to encourage the improvement of the quality of sustainable Indonesian tourism development, namely by carrying the concept of balance of life as a basic value for the Indonesian people to formulate Indonesian tourism

40 UNWTO, *Sustainable Development*, n.d., <https://www.unwto.org/sustainable-development>.

41 I Gede Ardika, *Kepariwisata Berkelanjutan: Rintis Jalan Lewat Komunitas* (Jakarta: Kompas, 2018)..

norms based on community, cultural and environmental-based tourism. This will only be realized when there is a role and support for qualified foreign tourists. The main point of this policy should be to improve the quality of sustainable tourism in Indonesia through the selective policy of foreign tourists entering or visiting Indonesia. It is contradictory with giving absolute freedom to foreign tourists by the enactment of a visa-free entry policy without applying and considering selective policy theory as well as the objectives and basic concepts of sustainable tourism

2.2 The Future of Visa-free Policy Concepts in Relation to Tourism Based on Immigration Selective Policy Theory

Visa free policy granted to 169 countries as contained in the attachment to the Presidential Regulation Number 21 of 2016 does not fully bring positive impact. Not only that, the visa-free policy that opens the gates for foreigners to enter Indonesia has implications for the vulnerability of state security. The vulnerability of state security as a consequence of the implementation of visa-free implementation occurs because the visa-free policy is not fully based on the theory of selective policy. If the impact of visa-free policy is not taken seriously, there will be more negative impacts.

The visa-free policy is not yet fully based on the principle of selective policy. It can be seen by the names of the country that are still listed as the recipients of visa-free facility by Indonesia but they do not provide the same policy in return for Indonesia. Meanwhile, the Immigration Law stipulates that a visa-free policy is only granted to countries that also provide the same reciprocity to Indonesia by providing a visa-free policy as well. Therefore, it is necessary to evaluate and improve the Presidential Regulation No. 21 of 2016. Moreover, the Covid-19 pandemic has caused the visa-free policy to be temporarily

discontinued. This temporary discontinuation is based on the Minister of Law and Human Rights Regulation Number 34 of 2021 which provides a gap for improvements to the Presidential Regulation Number 21 of 2016.

The concept of the future of a visa-free policy within the tourism framework should be based on the theory of selective immigration, namely the formation of a visa-free policy that is fully based on the principle of selective policy. The selective policy that forms the basis for the formation of a visa-free policy is aimed at selecting foreigners who enter the territory of the Republic of Indonesia. In addition, selective policies play an important role in limiting and controlling the movement of foreigners across national borders. So in this case, the theory of selective policy is used to select which countries can be granted entry permits to Indonesia without the obligation to have a visa.

The selective actions in determining the list of countries granted visa-free policy will have an impact on the results of implementing the policy. The selective actions are carried out by considering various aspects that become indicators to determine whether or not the visa-free continuation is granted to a country. These various aspects of consideration are closely related to the backgrounds of the 169 countries that are granted visa-free based on Presidential Decree Number 21 of 2016. These aspects are stated as follows:

- a. Countries whose citizens who become the most frequent travelers to Indonesia and bring many advantages for Indonesia;

Countries that have been granted a visa-free policy by Indonesia and these countries contribute the most in the number of tourists visits who are their own citizens, in this case it is very important to continue the granting of a visa-free policy to these countries. The high number of foreign tourist visits not only provides benefits for increasing the country's

economy through foreign exchange earnings but also opens opportunities for the community, especially local communities in tourist areas to build and develop their businesses. Thus, foreign tourist visits also affect the level of welfare for the community.

- b. Countries that are granted a visa-free policy but their citizens never have activities as tourists in Indonesia;

Countries that are exempt from having a visa requirement but their citizens have a very low level of tourist visits and have never even made a tourist visit to Indonesia. Granting a visa-free policy to these countries will not bring benefits to Indonesia. Therefore, it is very necessary to consider whether the continuation of granting a visa-free policy is still given to these countries or it must be stopped considering that there are not any benefits received by granting visa-free travel to countries whose citizens have never visited Indonesia.

- c. Countries that are categorized as having vulnerability reviewed from political, ideological, social, economic, and cultural dimensions;

Tourists who are citizens of a country categorized as having a certain level of vulnerability will certainly be at risk and endanger the security and order of the state. Therefore, in determining the country that is granted visa-free, it is essential to know the background of the country in question. It is important to know whether the country to be granted visa-free has a certain level of vulnerability and whether granting visa-free to countries that have certain vulnerabilities can provide benefits or it can harm Indonesia. If visa-free is still granted to countries with a certain level of vulnerability, it is necessary to carry out very strict supervision regarding the presence of these foreign nationals in Indonesia with the aim that these foreign nationals do not commit violations or

crimes that endanger the Indonesian state.

- d. Country whose citizens use visa-free policy to commit crimes and violations in Indonesia.

Countries whose citizens come to Indonesia only for taking advantage of the visa-free policy by committing crimes in Indonesia. Definitely, this is a factor that can threaten the integrity and sovereignty of the country. Therefore, before determining countries to be granted a visa-free policy, it is very important to know the background of their citizens. It is essential to know whether the foreign nationals are truly doing tourist activities or actually doing actions that harm and endanger the country.

Selective policy represented in visa-free policy holds an important role in selecting which countries meet the criteria to be granted visa-free policy. Selection of countries granted visa-free via selective policy is meant for avoiding negative impacts from visa-free policy and for making tourism that emphasizes more on quality than quantity. With Thus, it is very important to evaluate the implementation of the visa-free policy. By doing an evaluation, it will be known whether the application of a visa-free policy that is completely based on the theory of selective policy can provide maximum benefits for Indonesia or the other way around.

Evaluation on a policy is series of activities carried out to evaluate the implementation of a policy and determine whether the policy is well implemented or not. The results of evaluation will determine the continuity of a policy.⁴² Not all policy applied on public can reach expected results. It is common for public policy to fail in achieving a pre-planned goal. Therefore, policy evaluation is carried out to find out the factors that cause the failure of a policy.

42 Firyal Akbar Dan Widya Kurniata, *Studi Evaluasi Kebijakan*, (Gorontalo: Ideas Publishing, 2018), h. 11.

Essentially, evaluation of a policy is series activity related to assessments that are closely related to the substance, implementation, and impact of policies. Stewart and Lester suggest that policy evaluation is carried out to find out two things. First, to estimate the consequences that can occur with the implementation of the policy by describing its effect. Second, to measure the failure or success of the policy based on pre-determined criteria.⁴³

The focus of the objectives to be achieved in evaluating the policy or in this case the visa-free policy is done in several steps. First, it is important to summarize the policy outputs which are the real achievements of the implementation of a policy. Second, policy evaluation is carried out to measure the extent to which the policy can resolve social problems such as unemployment and poverty. In addition, the impact of the implementation of the visa-free policy can be seen from the extent to which the community, especially local communities in tourism areas, receive benefits from the existence of the policy. Third, policy evaluation is carried out to analyze the consequences arising from the implementation of the policy.

The policy evaluation stage is then followed by the reforming and changing policy stage. After the emergence of problems from the implementation of policies and the identification of the causes of policy deficiencies, the next action in the policy cycle is the change or termination of a policy. According to Anderson, there are three forms related to policy change. First, incremental changes are changes that are only made to some parts of the policy or in the sense that these changes are not made to change all parts of the policy. Second, the addition of a

new status is done in the implementation of special policies. Third, policy changes that are carried out on a large scale that occur due to the influence of political elites or changes in leadership regimes.⁴⁴ The changes of a policy refer to the concept of replacing the previous policy is carried out by revising the existing policy and adopting a new policy which is used to revise and change the old policy.

Referring to discussion above, as for the formulation of visa free policy for foreign travelers, there are several qualifications that fully adopt selective principle stated as follows:

1. Tourists from a country whose citizens frequently do tourism activity in Indonesia;
2. Tourists from a country whose citizens have not done tourism activity in Indonesia;
3. Tourists from categorized countries that have vulnerability situation reviewed from political, ideological, social, economic, and cultural dimensions.
4. Tourists from a country whose citizens frequently commit crime in Indonesia.

Evaluating and improving the visa-free policy periodically within a certain period of time with the aim to bring advantages for Indonesia is an important matter that should be considered. Thus, the application of this visa policy can achieve the objectives that are previously planned

CLOSING Conclusion

Visa-free policy can give advantages for a country. However, there is negative impacts that arise as a consequence of applying this policy, such as smuggling narcotics, terrorism, human trafficking, illegal immigrant and illegal labors. Seeing from selective policy theory perspective, negative consequences occur because the formation of visa free policy is not fully based on selective policy theory.

43 Chazali H Situmorang, *Kebijakan Publik (Teori Analisis, Implementasi Dan Evaluasi Kebijakan)* (Depok: Social Security Development Institute, 2016), h. 282.

44 Chazali H Situmorang, Op cit. 312.

Efforts that can be conducted for minimizing negative impact from visa-free policy is by evaluating and improving this policy. It can be done by fully applying selective policy with taking notice of qualifications that will filter foreign travelers visiting Indonesia. By doing so, this policy can filter only foreigners who give advantages for the country 's economy.

Suggestion

Government is expected to immediately evaluate and improve policies on visa-free periodically in certain range period. It is done with the aim that this policy can truly give advantages for Indonesian people's welfare and the country 's economic growth.

In doing improvement and refinement to visa-free policy, government cannot ignore immigration selective policy principle since it holds an important role in filtering foreigners who can enter Indonesian territory.

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