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The Impact of the Covid-19 Pandemic on the Legal Concept of Visas in Indonesia

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Abstract

The Covid-19 pandemic that has been going on globally since March 2020 has led to the universal closure of national borders. The exponential spread of the Covid-19 virus has resulted in a new phenomenon in the immigration field: stranded foreigners. To avoid the continued access of these stranded foreigners, Indonesian immigration issued a series of visa regulations. This study aims to analyse the impact of the Covid-19 pandemic on the concept of visa law applicable in Indonesia by existing formal law. This research uses a normative method with a conceptual approach, namely by identifying existing principles or doctrinal views and then generating new ideas. The concepts and theories used in this research are the rules of law concept with an analytical knife in the form of a hierarchy of laws and regulations theory and the theory of sovereignty. The results show that there is a shift in the concept of visa law in Indonesia as a result of the Covid-19 pandemic. In the theoretical study, it is known that this shift in the idea of visa law has ruled out the visa doctrine that has been regulated in Indonesian immigration law. However, the principle of relative sovereignty that respects the principles of international law is the justification for changing the concept of visa law in Indonesia during the Covid-19 pandemic.

Keywords: Covid-19 Pandemic, Immigration, Minister of Law and Human Rights Regulation, Visa

1. Introduction

Since it was declared a pandemic, Covid-19 has factually infected almost all countries (Ciotti et al., 2020). The world in terms of immigration, the Covid-19 pandemic has caused many countries to close their borders, including Indonesia. In a short period, Southeast Asia agreed to close their borders to international travellers and other countries in other parts of the world. (Yazid & Lie, 2020) Some things excluded from the restrictions on global human movement are only humanitarian assistance, diplomatic missions, supply chain-related cargo and particular matters due to force majeure. Tourists, cross-country foreign workers, and foreigners holding permanent resident permits, temporarily cannot leave the country they were in to return to their home country. (Directorate General of Immigration of the Republic of Indonesia, 2022)

Restrictions on the movement of people across countries and the closure of state borders caused a domino effect in multi-faceted state administration. Even the closing of the gates of one country is enough to give a chain effect

to the rest of the country. The closure of the Australian state borders causes foreigners residing in the country to be unable to leave Australian land and vice versa, causing no Australian citizens outside their homeland to return to the country. Likewise, in Indonesia, the closure of the country's gates for international crossings caused the absence of people entering and leaving Indonesian territory during the Covid-19 pandemic. The chain effect of closing the gate from one country to another is a form of mutually influencing relations over a country's policies. (Yazid & Lie, 2020)

In the country's economic calculations, the closure of the country's borders due to the Covid-19 pandemic has caused Indonesia's economic growth to be minus 2.97% in the first half of 2020. (Pati, 2020) This shows that immigration policy in closing state borders influences the national economy. Similarly, the fundamental values of Indonesia's immigration function as stated in the Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration in Article 1 number 3, which states that the four functions of Indonesian immigration, namely the fourth function as a facilitator of economic welfare development, are accurate. (Act Number 6 the Year 2011 Concerning Immigration, 2011) From an immigration perspective, the Covid-19 pandemic has noticeably influenced managing gateways at state borders and monitoring the presence and activities of foreigners residing in the country's territory. Briefly, the challenges faced by immigration in Indonesia in particular and in the region in general during the Covid-19 pandemic include: (Aji et al., 2021)

- 1) handling of human crossings at the gates of the country;
- 2) the potential for transmission of the virus to frontline officers;
- 3) handling of foreigners stranded on the territory of the country;
- 4) adaptive regulation of immigration regulations with rapid changes;
- 5) coordination and collaboration between government agencies both domestically and across countries.

Referring to the above problems, handling stranded foreigners requires the right approach. Stranded foreigners are not only travellers who have lost resources to be able to return to their home countries, but also, in this case, those who have sufficient resources but international regulations do not allow them to return to their home countries. For this reason, it is necessary to internalise the policies of state officials into a particular law. This ultimately forces the Indonesian government, through the Directorate General of Immigration, to be able to issue regulations that are adaptive to force majeure that no one has ever predicted. Changes in immigration regulations certainly do not target the Immigration Law itself as the basic norm of immigration regulation in Indonesia. Adaptive regulation is manifested in several operational provisions that can be directly applied in the field. The main concentration in solving the problem of foreigners stranded in Indonesia during the Covid-19 pandemic is the operative provisions regarding visas and residence permits. (Maulana & Arifin, 2021)

Of the nineteen immigration operational regulations issued during the Covid-19 pandemic, one-third are operational rules governing visas and residence permits. In the arrangements regarding visas and residence permits, there is an extraordinary discretion exercised by ministerial-level state administrative officials and the Director General of Immigration. Considering the limited access to international crossings, the Indonesian government issued a new concept in issuing visas to foreigners called onshore visas. (*Regulation of the Minister of Law and Human Rights Concerning Visas and Residence Permits in the Adaptation Period to New Habits*, 2020) The idea of this onshore visa is a legal breakthrough in the level of operational regulations. It is stated that foreigners who are located and detained/stranded in Indonesia can apply for a new visa within the territory of Indonesia to avoid potential violations of immigration law. This legal breakthrough shows the flexibility of regulations in Indonesia in dealing with the force majeure of the Covid-19 pandemic. Still, on the other hand, it has broken the formal doctrine that applies in Indonesia and the universal understanding of the visa itself. (Herlina, 2021)

Referring to the background conveyed above, the author sees that there has been a shift in the visa doctrine that has been known and embraced by the Indonesian government by applicable immigration law. For this reason, to make light of the problem, the author raised the issue of "The Impact of the Covid-19 Pandemic on the Legal Concept of Visas in Indonesia".

2. Method

The research method used in this study is the normative method. Normative legal research methods can be interpreted as legal research at the level of norms, rules, principles, theories, philosophies, and legal practices to find solutions or answers to problems either in the form of legal vacuums, conflicts of norms, or blurring of norms. This research method uses secondary data from sources such as laws and regulations, books related to the object of research, and research results in the form of reports, theses, and dissertations. The data that has been obtained is then used as supporting data in analysing the shift in the concept of visa law in Indonesia as a result of the Covid-19 pandemic (Nurhayati et al., 2021).

2.1. Subsection Identification

The specific approach used in this study is the conceptual approach. The conceptual process is carried out by understanding and reviewing the studied topic's principles, principles, doctrines, legal theories and philosophies. In this case, the principles, ideologies, and theories are adjusted to the problems raised. (Hart, 2018)

2.2. Sampling Procedure

This study takes secondary data because this study is normative. The following are three legal materials used in secondary data sources, namely primary, secondary and tertiary legal materials:

2.2.1. Primary Legal Material

Primary legal material is the main legal material, an authoritative legal material, that is, legal material with authority. Primary legal materials include laws and regulations and all official documents containing legal provisions. Primary legal material is the main legal material that supports this research, namely: (Ketut Suardita, 2017)

1. Laws of the Republic of Indonesia, including the Immigration Law and the Law on the Establishment of Laws and Regulations;
2. Government Regulations of the Republic of Indonesia, especially those related to the implementation of Immigration Law;
3. Presidential Regulation of the Republic of Indonesia, regarding Visas and handling the Corona-19 pandemic;
4. Regulation of the Minister of Law and Human Rights, especially those governing visas and residence permits.

2.2.2. Secondary Legal Materials

Secondary legal materials are documents or legal materials that explain primary legal materials such as books, articles, journals, research results, papers, and so on that are relevant to the problem to be discussed.

2.2.3. Tertiary Law Materials

Tertiary legal materials as legal materials that provide guidance and explanations for primary and secondary legal materials, such as dictionaries or encyclopedias.

3. Results

3.1. Immigration

Immigration derived from the subject matter of immigration is a unique terminology regulated in Indonesian immigration law. The term migration itself comes from the Latin "migratio," which means the movement of

residents from one regional entity to enter another regional entity. Meanwhile, the definition of immigration according to some of the leading tertiary legal materials includes:

1. Black's Law Dictionary: The coming into a country of foreigners for purposes of permanent residence. The correlative term "emigration" denotes the act of such persons in leaving their former country. (Black, 1968)
2. Oxford Dictionary of Law: The act of entering a country other than one's native country with the intention of living there permanently. (Black, 2002)
3. Glossary on Migration: A process by which non-nationals move into a country for the purpose of settlement. (International Organization for Migration, 2011)

Several definitions of immigration are based on the international dictionary; it explains that what is meant by migration is in the form of movement or movement of people from one country to another with specific purposes that are temporary or sedentary in nature.

The definitions of Immigration in Indonesia and other countries are not too different. The elaboration of the term Immigration in Indonesia was first stated in the legal product of the first Immigration Law, namely Law Number 9 of 1992, that Immigration is a matter of traffic of people entering or leaving the territory of the Republic of Indonesia and the supervision of foreigners in the territory of the Republic of Indonesia. Which was later revised in 2011 to become a matter of traffic of people entering or leaving the territory of the Republic of Indonesia and its supervision to maintain the upholding of state sovereignty. (Act Number 6 the Year 2011 Concerning Immigration, 2011)

From the immigration terminology regulated in the positive immigration law, it can be seen that immigration, according to the law, has a broader perspective. Immigration, according to legal terminology, is not only about cross-border human movement but is much more complex because it also includes all matters related to cross-human beings, such as border arrangements and management, travel documents, permits for existence to supervision from passers-by and foreigners residing in Indonesian territory.

3.2. Visa

In terminology, the term Visa comes from the French word 'Vise', which was previously adopted from Latin in the form of 'Visus', which means 'has been seen, to see. When translated into Indonesian, that meaning reads 'to have been seen, to see.' In the Big Dictionary of Indonesian Visa is a permit to enter and stay in a country outside its land in the form of a stamp and paraphrase stated by the relevant official on the applicant's passport. (Kemendikbud, n.d.)

Since the birth of the concept of territorial in an entity of a nation-state, visas have been used to control the entry of foreigners into state territory. (Ouellette & Livermore, 1993) Efforts to regulate the inflow of non-citizens are carried out by limiting or facilitating the intention of such foreigners' arrival into the state's territory. Of course, the arrangements in the form of granting visas are strongly influenced by the diplomatic and geopolitical relations of the region of the country. (Stringer, 2004) The presence of the concept of a nation-state gives the state the right and authority to decide whether a person may enter and live in the country. Visa policy can be seen as an instrument of restriction and control of the mobility of movement across borders. The philosophical basis on which a country requires visas for foreigners, not its citizens, before the person enters and carries out activities in the territory of the country is a form of control in the governance of the mobility of people so that the state can carry out prevention from possible threats and in the context of controlling the welfare of the state. (Mau et al., 2015)

3.2.1. Visa terminology in Indonesian immigration law doctrine

As stipulated in the Immigration Law or the hierarchical regulations under it, a visa is defined as a written statement given by an authorised official at the Representative of the Republic of Indonesia or elsewhere designated by the Government of the Republic of Indonesia containing approval for a Foreign National to travel

to Indonesian Territory and being the basis for granting a Stay Permit. From this definition, it can be concluded that visas in the Indonesian immigration law doctrine must meet the following elements:

1. In the form of written information;
2. Granted by authorised officials, both Immigration Officers and Foreign Service Officers, as specified in Article 40;
3. Given at the Representative of the Republic of Indonesia outside the territory of the Republic of Indonesia or in another place determined by the Government of the Republic of Indonesia, which is then regulated in Article 41, it is stated that the other place is the Immigration Checkpoint that the Minister has determined;
4. Contains consent for a Foreign National to travel to Indonesian Territory; and
5. It is the basis for granting a Stay Permit to such a foreigner.

3.2.2. Onshore visa terminology

Onshore comes from The English language, a combination of the syllables on and shore so that it can be interpreted on the beach or land. Onshore is a description of the place where an activity is carried out on the beach or land. The opposite of Onshore is offshore, meaning the opposite, namely outside the coast or open ocean. So when interpreted etymologically, Visa Onshore means Visa obtained while on the mainland. (cambridge.org, n.a.)

By formal law, the doctrine of onshore visas cannot be found in immigration legislation as the philosophical foundation of positive immigration law in Indonesia. The term onshore visa is not clearly stated regarding operational provisions in the product of immigration law. Although legal terminology is not mentioned, in disseminating information to the public, the Directorate General of Immigration gives information from this rule under the terms *Visa Onshore* and *Visa offshore* on various social media platforms. This is then more widely known in the community, so it seems to create a new doctrine in visa law in Indonesia. (Directorate General of Immigration, 2021)

3.2.3. e-Visa terminology

When the Minister of Law and Human Rights Regulation Number 26 of 2020 concerning Visas and Stay Permits in the New Customs Adaptation Period was issued on September 29, 2020, a new concept regarding existing visas was introduced, namely the electronic visa or e-Visa. This concept was introduced as a response to the emergence of the phenomenon of foreigners being stranded in Indonesian territory. In this e-visa concept, foreigners no longer need to apply for a Visa by coming to the Representative office of the Republic of Indonesia. Applications are made online through the Online Visa Approval website. This applies to foreigners who are within the territory of Indonesia and outside the territory of Indonesia.

In the clause of general provisions of Article 1 number 2, it is stated that an Electronic Visa (e-Visa) is a visa granted electronically by an authorised official that contains approval for a Foreign National to travel to the Indonesian Territory is the basis for granting a Stay Permit. In this terminology, no such phrase is given in the Representative of the Republic of Indonesia outside the territory of the state of Indonesia or in other themes stipulated by the Government of the Republic of Indonesia as expressed in Law Number 6 of 2011 concerning Immigration. Even if it is not clearly stated in the regulations, in practice, e-Visa applications can be made within the territory of Indonesia, and their issuance can also be practically given in the territory of Indonesia outside the Immigration Checkpoint.

3.3. Hierarchy of Laws and Regulations

In legislation, there is a hierarchy theory. Hierarchy theory states that the legal system is arranged in stages and levels like steps. The relationship between the norms that govern the actions of other norms is referred to as a super and subordination relationship in a spatial context. (Kelsen, 2005) The norms that determine the actions of

other norms are superior, while the norms that carry out the actions are called inferior norms. Therefore, the actions carried out by higher norms (superior) are the reason for the validity of the entire legal system that forms a single unit. (Suprpto, 1998)

Hans Kelsen suggests that the hierarchy of legislation in a legal system is known as the hierarchy of norms (stufenbau theory). For this reason, this theory is known as the Lex superior derogat legi inferior principle, which implies that the higher law overrides the lower law. In Indonesia, this chain of legal norms is actualised into a hierarchy of laws and regulations stipulated in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (Aditya & Winata, 2018). Lower-level legislation must not conflict with higher legislation. Based on Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, Indonesia recognises seven types and levels of laws and regulations consisting of: (Act Number 12 the Year 2011 Concerning the Establishment of Legislation, 2011)

- 1) Constitution of the Republic of Indonesia of 1945;
- 2) Decrees of the People's Consultative Assembly;
- 3) Government Acts/Regulations in Lieu of Laws;
- 4) Government Regulations;
- 5) Presidential Regulation;
- 6) Provincial Bylaws;
- 7) District/City Regulations.

In addition to the hierarchy of the position of the statutory regulations, the hierarchy of material content contained in each level of the regulation shall not conflict with the regulations above it. The legal strength of laws and regulations is by the levels in the hierarchy of laws and regulations. This is then expressly regulated in Article 7 Paragraph (2) of Law No. 12 of 2011, which determines that the legal force of laws and regulations is by the hierarchy as in Article 7 Paragraph (1). The provisions of article 7 clearly state that the 1945 Constitution of the Republic of Indonesia is used as a fundamental norm according to Kelsen or the basic rule of the state (Staatsgrundgesetz), as Nawiahy views. Similarly, the Law regulates the technical provisions of a state affair, as in this case, it is the Immigration Law. Therefore, the consequences are: firstly, the Immigration Act overrides all immigration regulations of an operational nature with a lower hierarchy (the principle of lex superiori derogat legi inferiori applies), and secondly, the content material of the Immigration Act becomes the source in the formation of all operational regulations under it, so that it must not conflict with the Immigration Act itself. (Huda, 2016)

3.4. Sovereignty

The word 'sovereignty' comes from the Latin word 'superanus', meaning 'the top'. The state is said to be sovereign or sovereign because sovereignty is a trait or essential feature of the state. (Santoso, 2018) When it is said that a country is sovereign, it is intended that it has the highest power. In the context of its implementation, this supreme power also has its limits. This space for the applicability of the highest power is limited by the country's territorial boundaries, meaning that a country has only the highest power within its territorial boundaries. Thus, the notion of sovereignty as the supreme power contains two necessary restrictions in itself, namely: (Kusumaatmadja & Agoes, 2003)

1. Power is limited to the territorial boundaries of the country that has that power, and
2. That power ends when the rule of another country begins.

In general, there are 2 (two) popular types of sovereignty theory, namely:(Akani, 2019)

1) Absolute Sovereignty

This doctrine emphasises that sovereignty is not only the highest authority but also knows no other authorities, and sovereignty has more or less unlimited power. The holder of total authority in establishing the national interest. Such a situation allows for the coercion of the will in carrying out various decisions taken by the owner of the power.

2) Relative Sovereignty

The idea of relative sovereignty is that sovereignty can be subordinated to international law. However, the sovereignty of one country cannot be subordinated to another because, in principle, all states are equal. The doctrine of relative sovereignty emphasises that the sovereignty of a state must be free from the other party's form of power authority. The state is sovereign within the scope of its jurisdiction and has the right to be free from any intervention. However, the state cannot be free from the norms of international law. Because international law also regulates various other sovereign states, and each state has the same obligations in international relations based on agreed international conventions and treaties.

4. Discussion

The Covid-19 pandemic has markedly changed the system of human life. From the beginning, humans were free to chat face-to-face, then with a snap, the habit was limited by health protocols regulated by each state government. As a result, virtual face-to-face has become commonplace and a new practice for human beings. In more important terms, the Covid-19 pandemic has also changed human interaction and mobility, especially in terms of mobility between countries. When the WHO first declared a pandemic on March 11, 2020, most countries imposed closures on the country borders regarding the traffic of people entering and leaving their countries. However, no one government has implemented the closure of state borders. In Indonesia, the closure of the country's borders due to the Covid-19 pandemic does not apply. In 2020 and 2021, the Indonesian government has always issued regulations that are adaptive to the actual situation and conditions regarding international human traffic restrictions.

In regulating human traffic between countries, the Indonesian government, through the Ministry of Law and Human Rights, the Directorate General of Immigration and the National Task Force for Covid-19 Mitigation, have issued nineteen regulations related to immigration as follows. (Directorate General of Immigration of the Republic of Indonesia, 2022)

Table 1: Immigration Regulations during the Covid-19 Pandemic

No	Publish Date	Regulatory Name
1	February 05, 2020	Regulation of the Minister of Law and Human Rights Number 3 of 2020 concerning Temporary Suspension of Free Visit Visas, Visas, and Granting of Forced Stay Permits for Chinese Citizens
2	February 28, 2020	Regulation of the Minister of Law and Human Rights Number 7 of 2020 concerning the Granting of Visas and Residence Permits to Prevent the Entry of the Corona Virus
3	March 18, 2020	Regulation of the Minister of Law and Human Rights Number 8 concerning Temporary Suspension of Visa Free Visits and Visit Visas Upon Arrival and Granting of Stay Permits in Forced Conditions
4	April 02, 2020	Regulation of the Minister of Law and Human Rights Number 11 of 2020 concerning the Temporary Prohibition of Foreigners from Entering the Territory of the Republic of Indonesia
5	October 01, 2020	Regulation Of Minister Of Law And Human Rights Number 26 Of 2020 On Visa And Stay Permit In The New Normal
6	October 15, 2020	Decree of the Minister of Law and Human Rights Number M.HH-01.03.01 of 2020 concerning Certain TPIs for Entry in the Adaptation Period of New Habits
7	January 14, 2021	Circular Letter of the Director General of Immigration 2021 concerning Temporary Restrictions on Foreigners Entering Indonesian Territory

8	January 26, 2021	Circular Letter of Extension of Validity Period of the Director General of Immigration Number IMI-0103. GR.01.01 of 2021
9	July 06 2021	Circular Letter Of Minister Of Law And Human Rights On Visas, Entry Signs, And Stay Permits During the Restrictions on Community Activities
10	July 21, 2021	Regulation Of Minister of Law and Human Rights Number 27 of 2021 concerning Restrictions on Foreigners Entering Indonesian Territory During the Enforcement of Restrictions on Emergency Community Activities
11	September 15, 2021	Regulation Of The Minister Of Law And Human Rights Number 34 Of 2021 On The Granting Of Visa And Immigration Stay Permits During The Mitigation Of The Spread Of Coronavirus Disease 2019 And National Economic Recovery
12	September 17, 2021	Decree of the Minister of Law and Ham Number M.HH-02. GR.02.02 of 2021 concerning Certain Immigration Checkpoints as Entry Points in the Period of Handling the Spread of Corona Virus Disease 2019 and National Economic Recovery
13	October 13, 2021	Circular Letter Number 20 of 2021 concerning International Travel Health Protocols During the 2019 Corona Virus Disease (Covid-19) Pandemic
14	October 13, 2021	Decree of the Chairperson of the Covid-19 Handling Task Force Number 14 of 2021 concerning Entry Points, Quarantine Places, and Rt-Pcr Obligations for Indonesian Citizens International Travel Actors Head of the Covid-19 Handling Task Force
15	October 15, 2021	Decree of the Head of the Covid-19 Task Force Number 15 of 2021 concerning 19 Foreign Countries whose citizens are allowed to come to Indonesia
16	November 02, 2021	Addendum to Circular Number 20 of 2021 concerning International Travel Health Protocols During the Corona Virus Disease 2019 (Covid-19) Pandemic
17	November 27, 2021	Circular Letter Number IMI-0269. GR.01.01 of 2021 concerning Temporary Restrictions on Foreigners Who Have Lived and/or Visited the Territory of Certain Countries to Enter Indonesian Territory to Prevent the Spread of the New Variant of Covid-19 B.1.1.529
18	November 29, 2021	Covid Task Force Circular Number 23 of 2021 concerning International Travel Health Protocols During the Corona Virus Disease 2019 (Covid-19) Pandemic
19	December 02, 2021	Addendum to Circular Number 23 of 2021 concerning International Travel Health Protocols During the Corona Virus Disease 2019 (Covid-19) Pandemic

Source: Directorate General of Immigration page (Directorate General of Immigration of the Republic of Indonesia, 2022)

As shown in the table above, of the nineteen immigration regulations issued, six regulations specifically regulate visas and residence permits. Then, of the six operational rules regarding visas and residence permits, three regulations specifically regulate visas in the circumstances of the Covid-19 pandemic, namely:

1. Regulation of the Minister of Law and Human Rights Number 26 of 2020 concerning Visas and Stay Permits in the Adaptation Period of New Habits;
2. Regulation of the Minister of Law and Human Rights Number 27 of 2021 concerning Restrictions on Foreigners Entering Indonesian Territory during the Implementation of Restrictions on Emergency Community Activities;
3. Regulation of the Minister of Law and Human Rights Number 34 of 2021 concerning the Granting of Immigration Visas and Stay Permits in the Period of Handling Corona Virus Disease 2019 and National Economic Recovery.

In its implementation, the Minister of Law and Human Rights Regulation Number 34 of 2021 revokes and replaces the Regulation of the Minister of Law and Human Rights Number 27 of 2021. And the Regulation of

the Minister of Law and Human Rights Number 27 of 2021 is an operational regulation that revokes and replaces the Regulation of the Minister of Law and Human Rights Number 26 In 2020. Revocation and replacement of an operational regulation in a short time during the Covid-19 pandemic is not a problem. This is understandable considering society's rapid changes and conditions at that time and to create national stability, especially in immigration.

4.1. The Legal Concept of Visa in a Conceptual Approach

One exciting thing about the three operational regulations mentioned earlier is the birth of a new legal concept related to visas. The legal concept of visas, referring to Law Number 6 of 2011 concerning Immigration, has changed. From the original, "in the form of a written statement given by an authorised official at the Representative of the Republic of Indonesia or elsewhere determined by the Government of the Republic of Indonesia containing approval for a Foreign National to travel to Indonesian Territory and become the basis for granting a Stay Permit" to "is granted electronically by an authorised official containing approval for a Foreign National to travel to Indonesian Territory and becomes the basis for granting a Stay Permit" based on the Regulation of the Minister of Law and Human Rights Number 26 of 2020.

Conceptually, the doctrine of immigration has been well outlined through Law Number 6 of 2011 concerning Immigration which is a positive law of Indonesian immigration. In the immigration law, in detail, the concept of visa is spelled out in several clauses, namely: (Act Number 6 the Year 2011 Concerning Immigration, 2011)

1. General Provisions, Article 1 number 18, which states the Visa of the Republic of Indonesia, from now on referred to as a Visa, is a written statement given by an authorised official at the Representative of the Republic of Indonesia or elsewhere determined by the Government of the Republic of Indonesia which contains approval for a Foreign National to travel to Indonesian Territory and is the basis for granting a Stay Permit.
2. In Chapter III regarding Entry and Exit of Indonesian Territory, Article 8 Paragraph (2) states that Every Foreign National entering the Indonesian Territory must have a valid Visa unless otherwise specified under this Law and international treaties.
3. In Article 13, Paragraph (1) letter d, it is then stated that the Immigration Officer refuses a Foreign National to enter Indonesian Territory if the foreigner does not have a Visa, except for those who are exempt from the obligation to have a Visa;
4. Furthermore, in Chapter V regarding Visas, Entry Stamps, and Residence Permits, Article 40 states that:
 - Visit visas and limited stay visas are the authority of the Minister.
 - Such visit visas and limited stay visas are granted and signed by the Immigration Officer at the Representative of the Republic of Indonesia abroad.
 - In the realm of the Representative of the Republic of Indonesia, there is no Immigration Officer yet. Foreign service officials carry out the granting of visit visas and limited stay visas.
 - Foreign service officials are authorised to grant Visas after obtaining a Ministerial Decree.
5. Furthermore, Article 41 states that a visit Visa may also be granted to a Foreign National upon arrival at the Immigration Checkpoint. The granting of a visit Visa upon arrival at the Immigration Checkpoint is carried out by the Immigration Officer.

From the concept written in the immigration law, there is a common thread that can be drawn, namely the Republic of Indonesia visa issued at the Representative of the Republic of Indonesia outside the territory of the Republic of Indonesia or in another place determined by the Government of the Republic of Indonesia, namely the Immigration Checkpoint.

Then if we refer to the operational regulations issued during the Covid-19 pandemic through three rules at the level of Ministerial Regulations, it can be seen that the common thread previously clearly written in immigration law has changed. This can be seen as follows: (Directorate General of Immigration of the Republic of Indonesia, 2022)

1. In accordance with the Regulation of the Minister of Law and Human Rights Number 26 of 2020, article

9 states that "Foreigners holding a Stay Permit residing in Indonesia can be granted a new Stay Permit after obtaining Visa Approval";

2. Article 14 then states that "In certain circumstances, the Minister under his authority may issue other policies relating to immigration facilities insofar as it provides general expediency and recovery of the national economy";
3. Meanwhile, in Article 3 of the Regulation of the Minister of Law and Human Rights Number 27 of 2021, the legal concept of visas mentioned in Article 9 of the Regulation of the Minister of Law and Human Rights Number 26 of 2020 has not changed, namely "Foreigners holding a Stay Permit residing in Indonesian territory can be granted a new Stay Permit after obtaining a Visa";
4. Only then, in the Regulation of the Minister of Law and Human Rights Number 34 of 2021, the legal concept of visas is refined through Article 1 number 4; it is emphasised that "The Visa of the Republic of Indonesia, hereinafter referred to as Visa, is a written statement, both manually and electronically given by an authorised official to travel to Indonesian Territory and is the basis for granting a Stay Permit" then in Article 6 it is stated that "Foreigners holding a Stay Permit who are in Indonesian territory and unable to return to their home country may be granted a new Stay Permit after obtaining a Visa."

Indeed, the legal concept of visas carried out in the Regulation of the Minister of Law and Human Rights Number 26 of 2020 to the regulation of its amendments through the Regulation of the Minister of Law and Human Rights Number 34 of 2021 is still acceptable in the concept of the operational level. It's just that, when in the stipulation of article by article of the ministerial regulation where it is stated that "Foreigners residing in the territory of Indonesia can apply for an extension of a Stay Permit through Visa approval by applying electronically," then, in fact, the legal concept of visas according to the doctrine outlined in the Immigration Law has changed.

4.2. Visa Legal Concepts in the Hierarchy of Laws and Regulations

Regulation of the Minister of Law and Human Rights Number 26 of 2020 is the first legal basis governing the birth of an electronic Visa or e-Visa. In Article 7, Article 8, and Article 9, it is stated that a Foreign National residing in Indonesia can apply for an extension of a Stay Permit through Visa approval using an electronic application. The same regulation in Article 11 states that a visit visa's approval also applies to a Visit Stay Permit. An electronic visa is a product of the Minister of Law and Human Rights Regulation 26 of 2020. As a result, anything related to an electronic Visa must not conflict with the higher rules of law or above.

By the hierarchy of laws and regulations, the position of the Ministerial Regulation is under the Presidential Regulation and above the Regional Regulation. This is implied as stated in the Elucidation of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislation, in the Elucidation of Article 8 paragraph (1) it is stated that "What is meant by "Ministerial Regulation" is a regulation stipulated by the minister based on content material in the context of administering certain affairs in the government", while in the body of Article 8 Paragraph (1) itself it is written "Types of Legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the Council of People's Representatives, Regional Representatives Council, Supreme Court, Constitutional Court, Supreme Audit Agency, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by law or by the Government by order of Law, House of Representatives Provincial Region, Governor, Regency Regional People's Representative Council /City, Regent/Mayor, Village Head or equivalent". (Act Number 12 the Year 2011 Concerning the Establishment of Legislation, 2011)

From the explanation of article 8, Paragraph (1), it can be concluded that a Ministerial Regulation can only be recognised if it is regulated or ordered to exist in the legislation above. Referring to the legal basis (considering) the three Ministerial Regulations, it can be seen that the three of them include Law Number 6 of 2011 concerning Immigration as a Law used as the legal basis. In addition, the three Ministerial Regulations also refer to Government Regulation Number 31 of 2013 concerning Regulations on the Implementation of Law Number 6 of 2011 concerning Immigration as the following legal basis. Then referring to Law Number 6 of 2011 itself, there is a clause that is delegative to be regulated in the regulations below, such as:

1. In Article 47, it is stated that "Further provisions regarding the requirements and procedures for application, types of activities, and the period of Visa, as well as procedures for granting Entry Stamps, are regulated by a Government Regulation";
2. Article 40 states that "The granting of visit visas and limited stay visas is the authority of the Minister";
3. Article 41 states, "A Foreign National who may be granted a visit Visa upon arrival is a citizen of a particular country established under a Ministerial Regulation."

Referring to these sources of law, the existence of a Ministerial Regulation regulating Visas and Electronic Visas during the Covid-19 pandemic is by the theory of the hierarchy of legislation. Even though the problem in this hierarchical perspective is that there are differences in the definition of Visa between those contained in Law Number 6 of 2011 and the Regulation of the Minister of Law and Human Rights, both regulated in Ministerial Regulation Number 26 of 2020, Ministerial Regulation Number 27 of 2021 and in Ministerial Regulation Number 34 of 2021.

Law 6 of 2011 does not recognise granting Visas for Foreign Nationals residing within the Indonesian Territory. So that the things that are deviations in the derivative regulations of this immigration law are:

1. Visas can indeed be granted elsewhere, but there is no specific explanation of which another place is referred to other than the Immigration Checkpoint.
2. Electronic visas are granted within the territory of Indonesia. They are not by the mandate of the Visa as in the Immigration Law Visas are granted abroad or in other places designated by the Minister in the form of Immigration Checkpoints.
3. Then, in the Immigration Law, the Visa is also not valid as a Stay Permit, but the Visa is only valid as the basis for granting a Stay Permit.
4. The electronic visa itself is valid as a Stay Permit for Foreigners in Indonesia.

Thus, it can be concluded that the concept of an electronic Visa carried out by operational regulations at the level of Ministerial Regulations is not in line with the visa concept in the immigration law as stipulated in the immigration law. Referring to these things, then in terms of the legal concept, the hierarchy theory of laws and regulations is not implemented correctly.

4.3. Visa Legal Concept in Sovereignty Concept

There are 2 (two) popular types of sovereignty theory, namely absolute sovereignty and relative sovereignty. Absolute sovereignty believes that the holder of power is fully authorised to enforce the will to make decisions. Meanwhile, relative sovereignty places a position in international law and obeys the principles of international law.

Sovereignty means that the state has the right to full power to exercise its territorial rights within the boundaries of the territory of the country concerned. The principle of sovereignty in the United Nations Charter is one of the most important and respected basic principles, especially in the equal position of rights between countries in the world, and this is one of the principles or doctrines called "jus cogens" or "peremptory norms," namely "A norm that is accepted as a basic norm of international law and recognised by the international community as a whole as a norm that should not be violated." (Santoso, 2018) In implementing active free politics, the state must pay attention to the principle of state sovereignty. Sovereign states have exclusive rights in the form of power, namely: (Santoso, 2007)

1. The power to control domestic matters;
2. The power to accept and expel strangers;
3. Privileges to open its diplomatic representatives in other countries;
4. Full jurisdiction over crimes committed within its territory.

Thus, it can be interpreted that within a sovereignty, there is an inherent territory of authority /jurisdiction and cannot be separated from the sovereignty itself. The presence of an electronic Visa is undoubtedly not a form of coercion from the Indonesian government towards foreigners stranded in Indonesia but rather an exclusive right of the state to control its domestic problems. The government considers the interests of other countries whose

citizens are in Indonesia. The Government of Indonesia conducts various communications and coordination through the Ministry of Foreign Affairs and the Directorate General of Immigration to assist in the repatriation of foreign nationals stranded in Indonesia. Thus the theory of relative sovereignty can be more in line with the rules of electronic Visa. In the perspective of sovereignty theory, the electronic Visa is an embodiment of the principle of relative sovereignty or sovereignty that respects the principles of international law.

4.4. Changes in the Legal Concept of Visa in Indonesia as a result of the Covid-19 Pandemic

When the Minister of Law and Human Rights Regulation Number 27 of 2021 was issued to replace the Minister of Law and Human Rights Regulation Number 26 of 2020, the clauses in this latest regulation did not change the concept, especially in terms of the concept of an electronic visa. Then, through the Minister of Law and Human Rights Regulation Number 34 of 2021, which replaced the Minister of Law and Human Rights Regulation Number 27 of 2021, the legal concept of an electronic Visa became increasingly apparent. However, later, the Covid-19 pandemic situation, which forced people to be restricted in their movements, caused the socialisation of these operational regulations not to be carried out optimally. So to make it easier for the general public, a journalistic narrative was made by the Directorate General of Immigration regarding this electronic Visa. Through its social media pages, the Directorate General of Immigration introduces this electronic Visa as an Onshore Visa. Initially, the translation of the electronic visa into an onshore visa was only a term that explained that the visa was obtained on land or within the territory of Indonesia. However, this translation makes it clear that the existing concept of visa law in Indonesia has shifted from the immigration doctrine stated in the basic norms of immigration law itself. The essence of the Onshore Visa itself is very different from the essence of the Visa in Law Number 6 of 2011 concerning Immigration, where the Visa is a selection stage for someone who wants to travel to a country and is valid as an entry permit when someone is still outside the country whose destination, to lose the concept of security itself.

Law Number 6 of 2011 concerning Immigration has a separate meaning regarding Visas and Stay Permits. It can be seen as follows:

1. A visa is a written statement given to a Foreigner to travel to the Indonesian Territory and as a consideration for issuing a Stay Permit. A visa is considered a permit to travel to the territory of Indonesia and ideally is given at the Indonesian Representative office or other designated place. Meanwhile, the electronic Visa, later introduced as an Onshore Visa, is not valid as a travel permit because an Onshore Visa applicant has already been in Indonesian territory.
2. Stay Permit is a permit issued to Foreign Citizens by an authorised official to stay in Indonesia. But the fact is that the Onshore Visa also applies as a Stay Permit as long as the Foreigner is in Indonesia. So, the essence of an Onshore Visa is a Visa that is valid as a Stay Permit in Indonesia.

This change in concept was then strengthened by the broadcast of the Directorate General of Immigration through its social media accounts. In the Instagram account of the Directorate General of Immigration, the electronic visa terminology mentioned in the ministerial regulation is presented with improper journalistic language, that is, being an onshore visa.

5. Conclusion

The electronic visa, which is then published as an onshore visa, is a legal product in a force majeure situation. The Covid-19 pandemic forced the government to immediately provide space for foreigners stranded in Indonesia. Even though the operational law product is present in a global emergency, the regulation in the form of a Ministerial-level Regulation is still by the rules of the hierarchical theory of laws and regulations. Even so, the issuance of these three ministerial regulations is a manifestation of the sovereignty of the government of the Republic of Indonesia in regulating its domestic affairs. What needs to be done by the Directorate General of Immigration as an extension of the power of state administration is to ensure the validity period of these three operational regulations. Determination of the useful life of the Ministerial Regulation related to electronic Visa/Onshore Visa becomes important when the concept of visa law in Indonesia is not in line between

operational regulations and the initial doctrine regulated in the basic norms of immigration law through Law Number 6 of 2011 concerning Immigration.

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