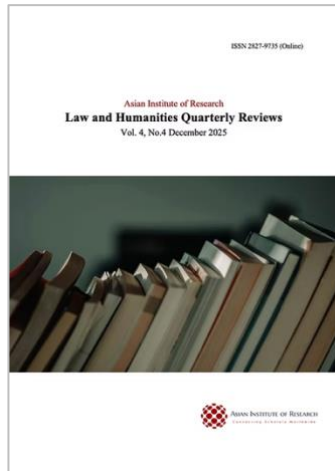




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Immigration Reasons: Legal Instruments for Refusing Entry of Foreigners into Indonesia

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Abstract

The reasons for immigration rejection are regulated in Article 13 of Law Number 6 of 2011 concerning immigration. This article stipulates ten criteria for reasons for rejection of foreigners. However, the problem is that this article has limited the reasons for immigration rejection to only ten reasons and there are no provisions that open up space for other regulations to further regulate the reasons for immigration rejection. However, in reality, there are reasons for immigration rejection outside of Article 13 of Law Number 6 of 2011 concerning immigration that are applied by immigration officers, then a new legal norm emerged that regulates the reasons for immigration rejection in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015. This research was conducted using an empirical normative legal research method. Normatively, there is a discrepancy when viewed from the hierarchy of laws and regulations regarding the implementation of reasons for rejection outside of Article 13 of Law Number 6 of 2011. Nevertheless, the existence of these reasons for immigration rejection is very important to maintain state sovereignty and implement selective immigration policies. Therefore, the presence of Law Number 30 of 2014 concerning government administration is a way out of the implementation of reasons for immigration rejection outside of the reasons for rejection in Article 13 of Law Number 6 of 2011, because it has fulfilled the requirements and elements for its implementation as a discretionary decision.

Keywords: Immigration Reasons, Refusal, Foreigners

1. Introduction

The intensity of human traffic, both entering and leaving a country, increases annually. This is due to the increasingly advanced and modern technology created by humans, especially in the fields of information, communication, and transportation. Technological developments in the field of transportation have made it easier for people to travel to other areas, including international travel. This is because modern transportation allows people to move quickly, affordably, and is trusted by the public in terms of safety (Legiani & Lestari, 2018).

People move from one region to another for various reasons, whether it's for vacation, better medical treatment in the destination country, family visits, diplomatic visits, or business. Distance is no longer a barrier to movement, and international travel is now possible. Therefore, it can be said that people can move between countries to fulfill their interests or needs (Legiani & Lestari, 2018).

The increasingly diverse needs of humans and the desire to improve their standard of living have led to increased migration between countries in the future (Testaverde, et.al., 2017). The movement of people between countries has received significant attention from each country around the world. This is based on the fact that the presence of foreigners in a country's territory concerns the sovereignty and security of the country concerned. In this case, sovereignty becomes a very fundamental matter because of the policies taken regarding citizens of other countries and how the country can demonstrate its existence in implementing regulations aimed at maintaining security and sovereignty over its own country.

The movement of people from one country to another requires the regulation of human traffic. International law expert JG Starke stated that it is the full right and authority of a country to regulate the movement of people entering or leaving its territory without any interference or intervention from any party, this is in line with the existence of a country's sovereignty over its territory (Starke, 2015).

It is a fundamental obligation for a country to safeguard its sovereignty. In English, sovereignty comes from the word "sovereignty" and in Latin, it comes from the word "*superanus*," which means supreme. Sovereignty is one of the basic, essential characteristics that a country must possess. A country is said to be sovereign if it can regulate and control the country absolutely without intervention from other parties. However, this power is also accompanied by predetermined boundaries, including the issue of territorial boundaries and areas of the country (Santoso, 2018). The Great Dictionary of the Indonesian Language states that state sovereignty is the highest power that exists in a country. Meanwhile, according to the Great Dictionary of the Indonesian Language, legal sovereignty is located or exists in law.

Speaking of sovereignty, a country implements regulations regarding the passage of foreigners according to its own national interests. For example, the immigration policy implemented by the United States through the Department of Homeland Security and Transportation Security The US Immigration Administration, an agency that handles US immigration matters, refused entry to General Gatot Nurmantyo. This refusal was made even before the person entered the country. This naturally drew criticism from Indonesia, which questioned the reason for the refusal. However, this was an immigration reason given by the US Immigration Department and is a matter of the country's sovereignty. This is done when someone is unwanted in a country, in this case the United States (Park & Kim, 2019).

This can also be done by the Indonesian government through immigration regulations in Indonesia which regulate the entry and exit of Indonesian citizens and foreign citizens in the territory of Indonesia, especially the reasons for refusing foreigners have also been regulated in such a way in Article 13 of the Law Number 6 of 2011 about Immigration which is further regulated in the Regulation of the Minister of Law and Human Rights Number 44 of 2015 concerning Procedures for Entry and Exit Checks at Immigration Checkpoints (hereinafter ... called Minister of Law and Human Rights Regulation Number 44 of 2015), specifically Article 106 concerning the rejection of foreigners. The mandate of this law is implemented by the Ministry of Law and Human Rights through the Directorate General of Immigration. Immigration, in this case, implements immigration policies and functions, requiring everyone entering or leaving Indonesia to comply with and comply with all established regulations.

Article 1 paragraph (3) of the 1945 Constitution states that Indonesia is a state based on law (Republic of Indonesia, 1945). Indonesia is a state based on law with the general principle of a state based on law, namely having written or statutory laws and regulations. To regulate the administration of the state by institutions based on applicable laws and regulations, limit the power of state administrators, and protect the rights of citizens (Siallagan, 2016).

In the immigration law, it has been regulated that everyone who will enter or leave the territory of the Republic of Indonesia, whether Indonesian Citizens or Foreign Citizens, must be carried out and go through Immigration Inspection. The standard carried out is checking the Visa, Travel Documents and Residence Permits concerned whether they are still valid and still valid (Kemenkumham, 2011). This is done at the Immigration Checkpoint and is in line with the implementation of the Immigration Function, namely maintaining national security. Legal certainty in a sovereign country must be upheld, this aims to increase public trust in the government as well as to

realize the image of a dignified nation in the eyes of the international world (Arifin, 2018). The realization of legal certainty implemented by the government, especially in the field of immigration, is by implementing selective immigration policies through immigration checks on people who will cross to enter or leave Indonesian territory.

In this case, immigration has the authority to reject or accept foreigners who will enter Indonesian territory, where the decision taken is a manifestation of state sovereignty implemented through immigration officials. Since the enactment of Law Number 6 of 2011, the crossing route has been regulated in such a way.

There are two things that the author is concerned about, the first is that in Article 13 paragraph (1) of Law Number 6 of 2011 there are ten reasons for rejection of Immigration which state:

"(1) Immigration officers will refuse entry to Indonesian territory to foreigners if the foreigner:"

- a. his name is listed on the Deterrence list;
- b. does not have a valid and valid Travel Document;
- c. having fake immigration documents;
- d. do not have a visa, except those who are exempt from the obligation to have a visa;
- e. has provided false information in obtaining a visa;
- f. suffering from an infectious disease that is dangerous to public health;
- g. involved in international crimes and organized transnational crimes;
- h. included in the list of wanted persons to be arrested from a foreign country;
- i. involved in treasonous activities against the Government of the Republic of Indonesia; or
- j. included in a network of practices or activities of prostitution, human trafficking and smuggling.

Humans are complex creatures, so they need rules that can "contain" all the behavior they might engage in, therefore immigration reasons are needed (Ousey & Kubrin, 2018). It because the reasons for immigration rejection must be holistic and unlimited (Cole, 2014), if the reasons for immigration rejection are only limited to these ten reasons, this can impact the flexibility of decisions that can be taken by immigration officers in providing reasons for rejection of foreigners who are not worthy to enter the territory of Indonesia. The next problem is that in Regulation of the Minister of Law and Human Rights Number 44 of 2015, it has been further regulated regarding the Procedures for Entry and Exit Checks of Indonesian Territory at Immigration Checkpoints, especially the Procedures for Refusal to Enter Indonesian Territory as stated in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015. The text of Article 106 paragraph (1) and paragraph (2) in the hierarchy of legal norms must be based on the law above it or higher. However, in Article 106 paragraph (2) the text of letters c and d of Regulation of the Minister of Law and Human Rights Number 44 of 2015 (Minister of Law and Human Rights of the Republic of Indonesia, 2015):

- c. endanger security; or
- d. disturbing public order.

The wording of Article 106 paragraph (2) letters c and d is not stated in Law Number 6 of 2011 as a higher law. This can cause legal uncertainty and it is not impossible that it will become a loophole that will be exploited by the subject of the wording of this Article if it is applied by immigration officers in the future. In his theory, Hans Kelsen states that legal norms are tiered and layered in a hierarchy (arrangement) in the sense that a higher norm applies, originates and is based on an even higher norm, and so on (Indradi, 2005). On this basis, the author sees that there is an oddity seen from the Legal Norm Hierarchy System, so the author is interested in raising a scientific work on the application of Regulation of the Minister of Law and Human Rights Number 44 of 2015, especially Article 106 paragraph (2) letters c and d of Law Number 6 of 2011 Article 13 seen from the hierarchy of legal norms that apply in Indonesia.

Based on the background described above, the problem formulation studied in this research is: (1) how is the immigration reasons clause in Article 13 of Law Number 6 of 2011 applied as a basis for refusing entry to foreigners at the Soekarno Hatta Immigration Checkpoint? (2) What is the legal force of Article 106 paragraph (2) letters c and d of the Minister of Law and Human Rights Regulation Number 44 of 2015 regarding Article 13? Law Number 6 of 2011 reviewed from the Theory of the Hierarchy of Legal Norms?

2. Method

In conducting this scientific research, the author employed the empirical-normative legal research method. This empirical-normative legal research method essentially combines a normative legal approach with the addition of various empirical elements (Ali, 2021). This empirical-normative research method also examines the implementation of normative legal provisions (statutes) in action in each specific legal event that occurs within a society.

This research was conducted by tracing and collecting primary data sources and materials from books, observations, interviews, field questionnaires, and a comprehensive overview of the legal principles, legal rules, and legal provisions regarding the Legitimacy of Immigration Reasons (Tan, 2021). The secondary and primary data obtained will be processed through several methods, including:

- a. data editing involves checking the collected data to ensure it is complete, accurate, and relevant to the problem. Correcting any errors, and checking for relevance and consistency between the data and the desired data.
- b. data classification, which is carried out by grouping data according to the subject area to make it easier to analyze, in accordance with the rules that have been established in the problem so that actual (valid) data is obtained for this writing.
- c. data systematization, which is done by compiling and placing data on each topic by looking at its type and its relationship to the problem so that it makes it easier to discuss it.

3. Discussion

3.1. *The Rejection Clause on Immigration Grounds in Article 13 of Law Number 6 of 2011*

3.1.1. Immigration Check at Immigration Checkpoint by Immigration Officers

Article 9 paragraph (1) of Law Number 6 of 2011 states that every person who will enter or leave the territory of Indonesia is required to undergo an inspection carried out by an Immigration Officer at an Immigration Checkpoint. Immigration inspections include inspections related to the completeness of travel documents and the identity of the person concerned (Immigration, 2011). This is in line with the direction of Indonesia's immigration policy which implements a selective immigration policy which aims to ensure that only people who meet immigration requirements, are beneficial and do not endanger the security of the Indonesian state are allowed to enter the territory of Indonesia this includes the entry, presence and exit of the foreigner and based on this principle, only people who are beneficial are allowed to enter. Based on Article 1 number 12 of Law Number 6 of 2011, it states that Immigration Checkpoints are checkpoints at seaports, airports, border crossings, or other places as entry and exit points to the territory of Indonesia. Based on the provisions of this regulation, it can be concluded that the implementation of immigration rejection can also be carried out at immigration checkpoints as referred to in Article 1 number 12 of Law Number 6 of 2011 which is an entry point or exit point Indonesian territory.

In order to ensure the implementation of the selective immigration policy, the government implements an immigration policy where the immigration policy is implemented by the minister responsible for the entire Indonesian border line, implemented by Immigration Officers which include immigration checkpoints and border crossing posts (Immigration, 2011). Immigration officers as the ones in control of the implementation of all stages of immigration checks, especially at the immigration checkpoints at Soekarno Hatta International Airport, have the authority to make decisions regarding whether or not foreigners are allowed to enter and exit Indonesian territory (Sjahriful, 2005).

Based on data obtained from the Immigration Checkpoint Division of the Soekarno-Hatta Immigration Office (2020), it shows that in the period of January 1 - January 31, 2020, the number of crossings made by foreigners at the Soekarno Hatta Immigration Checkpoint with the number of arrivals was 685,124 people, departures were 618,285 people with a total number of crossings in January reaching 1,303,409 people., while in the period of February 1-February 28, 2020, the number of crossings of foreign citizens at arrivals was 423,524 people and at departures was 441,112 people. From these data, it can be seen the high intensity of crossings made by foreigners

at the immigration checkpoint of Soekarno Hatta International Airport. Seeing the number of foreigners of more than 400,000 entering or leaving Indonesian territory in a month, of course this requires immigration officers on duty at the Immigration inspection counter as the front line in selecting every person who will enter or leave Indonesian territory to have the competence and expertise and have the courage to reject foreigners who are not worthy of entry.

The procedures for examining foreigners based on Minister of Law and Human Rights Regulation Number 44 of 2015 and SOP IMI-GR.03.02-1189 are as follows:

- a. The immigration checkpoint for entry into Indonesian territory at Soekarno Hatta International Airport is located at the immigration counter in the arrival area of terminal 2F or arrival area of Terminal 3 Ultimate.
- b. Immigration officers check travel documents, Visa, VOA voucher, boarding pass and return travel ticket to the country of origin or another country
- c. Immigration officers conduct a brief interview regarding the foreigner's reasons and purpose for visiting Indonesia. Questions asked include: the foreigner's length of stay in Indonesia, return or onward tickets to another country, and the foreigner's residence or whereabouts while in Indonesia, such as staying with a sponsor or relative.
- d. Immigration officers carry out checks regarding the visa used by the foreigner, whether it is a Single Visa Entry, Multiple Entry and Visas on Arrival are exceptions for foreigners exempt from visa requirements, foreigners holding Limited Stay Permits and Permanent Stay Permits, and re-entry permit checks. If a foreigner cannot present the above requirements, they must submit their application to the designated officer.
- e. Immigration officers scan foreigners' travel documents in the form of Scans or Swaps via the BCM system to read and record the identity of the travel document owner and the crossing data that has been carried out.
- f. Checking Foreigner data on the deterrent list through the Border Control system Management that has been integrated with Hit alert from Interpol.
- g. Directing foreigners identified on the deterrent list to designated immigration officials.
- h. If the foreigner has fulfilled the requirements to enter Indonesian territory, the immigration officer will then affix an entry stamp and the officer's initials to the travel document and the foreigner's A/D card.
- i. In the BCM system, the Immigration officer clicks allow in the BCM system and then the travel documents can be returned to the foreigner and they can enter Indonesian territory legally.
- j. If during the inspection process a foreigner cannot fulfill the requirements in accordance with applicable laws and regulations or the immigration officer assesses that the foreigner is not fit to enter Indonesian territory, the immigration officer will click Refer on the system and will then be submitted to the Supervisor/ Assistant Supervisor and will consider the superior's decision to be refused entry into Indonesian territory and processed to be sent back to the country of departure at the first opportunity.

During the immigration inspection stages, foreigners are required to comply with and obey the regulations in force in Indonesia and the inspection is carried out based on the principle of selective immigration policy.

3.1.2. Rejection of Foreigners Based on the Reasons for Refusing Immigration in Article 13 of Law Number 6 of 2011

Sovereignty is the essential characteristic of an independent nation. A nation is said to be sovereign, meaning it possesses supreme power and authority. This aligns with Jean Bodin's theory of state sovereignty, which posits that a nation's sovereignty must be absolute, meaning that it is supreme, original, and not subject to the influence of any other power. However, this power remains limited by the country's territorial boundaries. Indonesia's immigration law reflects the interests and sovereignty of the nation and aligns with the aspirations and interests of the Indonesian people.

Based on the selective immigration policy implemented by the Indonesian government, which aims to ensure that only those who meet the immigration requirements and are eligible for benefits are allowed to enter Indonesian territory, meaning that foreigners who do not meet these requirements will be refused entry into Indonesian territory. Article 13 of Law Number 6 of 2011 provides 10 reasons for immigration refusal:

- a. his name is listed on the Deterrence list;

- b. does not have a valid and valid Travel Document;
- c. having fake immigration documents;
- d. do not have a visa, except those who are exempt from the obligation to have a visa;
- e. has provided false information in obtaining a visa;
- f. suffering from an infectious disease that is dangerous to public health;
- g. included in the wanted list for arrest from a foreign country;
- h. involved in treasonous activities against the Government of the Republic of Indonesia; or
- i. included in the network of practices or activities of prostitution, human trafficking, and smuggling.

This article mentions the ten criteria for refusals made by immigration officials at Immigration Checkpoints, which are rejected for technical immigration reasons or for reasons of national interest (Düvell, 2003). Immigration refusals are made just before a foreigner is about to enter Indonesian territory, meaning the foreigner is not yet present and has not yet carried out activities in Indonesian territory, but is still at the TPI and is being examined by immigration officials. It is then up to the immigration official to determine whether the foreigner can enter or be refused entry into Indonesian territory. Making a decision requires a thorough assessment from an immigration official and must be based on applicable regulations. The following is a graph of refusals for foreigners at the Soekarno-Hatta International Airport Immigration Checkpoint based on the reasons used.

Table 1: Immigration Refusal Reasons

No	Reason for Rejection	Amount
1	Immigration Reasons	100
2	Not to Landing	35
3	Visa Issues	7
4	Interpol	4
5	Block	9
7	Passport Issues	12
8	Prostitution Problem	1

Source: Soekarno Hatta Immigration Checkpoint Division (2020)

The data shows a very high intensity of crossings carried out by foreigners. Meanwhile, during this period, there have also been rejections of foreigners who, after being assessed by immigration officials, were declared unfit to enter Indonesian territory for various reasons. Meanwhile, based on data obtained in the field, the author divides two categories of reasons for rejection used by immigration officials, namely reasons for rejection based on Article 13 of Law Number 6 of 2011, namely ten immigration reasons and rejections outside Article 13 of Law Number 6 of 2011 or based on immigration reasons. From this division, it was found that foreigners who were rejected for Immigration Reasons had a number of rejections with a percentage of 60% and with reasons in accordance with Article 13 of Law Number 6 of 2011 amounting to 40%.

However, as time goes by, the application of the reasons for immigration rejection based on Article 13 of Law Number 6 of 2011 has become ineffective because it is impossible for the law to regulate all kinds of cases that occur in daily practice (Ansori, 2015). The fact that the Article has been locked on only ten reasons for rejection must be faced with the complexity of new problems and in the field cases have been found that cause foreigners to be unfit to enter Indonesian territory while this is not stated in Article 13 of Law Number 6 of 2011.

Based on the data and facts that occur in the field and in accordance with the explanation above, it can be concluded that the application of immigration reasons as a basis for rejecting foreigners in Indonesia is very important. From the above data, it can be seen that the number of rejections with immigration reasons outside of Article 13 of Law Number 6 of 2011 is more dominantly carried out by immigration officials. However, although the existence of immigration reasons itself is not stated in Article 13 of Law Number 6 of 2011 concerning immigration, the purpose and reasons for implementing rejection reasons based on immigration reasons are very important, namely

a preventive measure in order to select foreigners who are not suitable to enter Indonesian territory for the sake of creating security for the Indonesian people.

In addressing this problem, new legal norms have emerged regarding the reasons for immigration rejection, which are stated in the Minister of Law and Human Rights Regulation Number 44 of 2015 concerning procedures for checking entry and exit from Indonesian territory at Immigration Checkpoints.

The emergence of a new legal norm in the form of a Ministerial Regulation (Regulation of the Minister of Law and Human Rights), which again regulates the grounds for rejection of foreigners, naturally raises the question: can its implementation be recognized as a legally recognized decision, considering that Article 13 of Law Number 6 of 2011 limits the grounds for rejection to only ten? Furthermore, the Article does not contain any additional regulations stating that there will be further regulations governing the grounds for rejection of immigration.

Based on the results of an interview on August 23, 2020 with the Head of Section IV of the Immigration Checkpoint at Soekarno Hatta International Airport, Uckhy Adhitya, it was found that the basis for immigration officials to state immigration reasons outside of the ten reasons contained in Article 13 of Law Number 6 of 2011 is a form of discretionary policy which of course must be with the knowledge of the superior of the official who uses the discretionary authority. This policy was taken as part of the immigration agency's efforts to support the government which is trying to improve the welfare of the Indonesian people through strategic government policies. Discretion in this case is a form of authority in the form of regulations of the Minister of Law and Human Rights which are implemented by immigration officials. The example of the process of refusing entry to foreigners at the Immigration Checkpoint based on an interview with the Assistant Supervisor of Inspection Section III-2 of the Immigration Checkpoint at Soekarno Hatta International Airport, Sahril Wildani on September 2, 2020:

- a. When a foreigner arrives at the TPI counter at Soekarno Hatta International Airport, immigration officers will conduct a document check and a brief interview regarding the foreigner's intentions and purposes for coming to Indonesia.
- b. Based on the data held by foreigners coming without a visa with the intention of using the visa-free visit to travel in Indonesia
- c. Based on information from the results of the examination and interview, foreigners must provide the reason for coming to Indonesia and foreigners are required to have a return ticket, with a period of stay in Indonesia of 25 days from the date of arrival.
- d. Furthermore, when the foreigner was asked about his whereabouts during his stay in Indonesia, including tourist destinations and residence, he was unable to answer the immigration officer's questions in detail. Based on this finding, the foreigner was directed to the office for further questioning by the supervisor and assistant supervisor.
- e. Once in the office, the assistant supervisor checked the amount of money he had for his stay in Indonesia. The estimated costs were insufficient for the planned 25-day stay.
- f. When asked whether a foreigner has someone they know in Indonesia, the foreigner turns out not to have any acquaintances in Indonesia.
- g. Based on the foreigner's statement and the results of the above examination, it can be assumed that the foreigner's arrival is contrary to the selective immigration policy and the principle of reciprocity which states that only useful people can enter Indonesian territory. Therefore, it is concluded that the foreigner is not eligible to enter. Next, the supervisor requests the approval of the head of the inspection section to refuse entry to the foreigner in question.
- h. With the approval of the head of the inspection section, the foreigner will be refused entry by issuing a letter of refusal to enter.

Based on the rejection process that has been explained by the SPV Examiner III above, the rejection for this reason is not regulated in Article 13 of Law Number 6 of 2011, but this reason is in accordance with Article 106 paragraph (2) of the Minister of Law and Human Rights Regulation Number 44 of 2015. This shows that the emergence of a new legal norm in the form of reasons for rejection contained in the Minister of Law and Human Rights Regulation is very necessary as a basis for immigration officials to reject foreigners because this reason is not

contained in Article 13 of Law Number 6 of 2011. This rejection solely has the same goal, namely to maintain the security and welfare of the Indonesian people.

The existence of discretion itself in principle is not a tool to harm the legislation, but instead discretion is present as a complementary tool to the legislation which of course in its implementation cannot continuously reach every aspect of people's lives. So in the implementation of discretion related to the reasons for rejection, although in Article 13 of Law Number 6/2011 the immigration reasons have been locked to only 10 (ten) immigration reasons, the reasons for rejection with immigration reasons are the discretion of immigration officials which aims to overcome concrete problems faced in the administration of government.

Based on the graphs and facts in the field, rejections based on immigration reasons are more dominantly applied by immigration officials, so the question now is how is the legality of implementing rejections against foreigners using immigration reasons while this is not stated in Article 13 of Law Number 6 of 2011 as a higher regulation, while in Article 13 the reasons for rejection have been locked to only ten reasons for rejection.

Immigration officers as the cornerstone and spearhead in maintaining the sovereignty of the state to select people who enter and can endanger the security and sovereignty of the Indonesian state of course need rules that can be used as guidelines in implementing immigration policies at immigration checkpoints, because it is impossible for immigration officers in carrying out their functions when seeing foreigners who based on their assessment violate and do not meet the requirements to enter the territory of Indonesia are allowed only because the rules in Article 13 of Law Number 6 of 2011 do not contain the reasons that are currently happening because of course this has contradicted the function of the existence of immigration according to Article 1 number 3 of Law Number 6 of 2011:

"The Immigration function is part of the state government's affairs in providing Immigration services, law enforcement, state security, and facilitating the development of community welfare."

In accordance with its function, immigration is a manifestation of law enforcement and national security guards, in this case from foreigners who do not have a clear purpose, interest in their arrival in Indonesia and have the potential to endanger national security. Departing from these problems, the use of immigration reasons as a basis for refusing entry to foreigners in Indonesia is a decision of immigration officials to address the increasingly complex problems that arise at immigration checkpoints and in fact this is needed even though refusals on immigration grounds are not regulated in Article 13 of Law Number 6 of 2011 which ultimately has the same goal, namely maintaining national security and sovereignty.

3.1.3. Discretionary Implementation Policy as a Form of Authority

In carrying out its function as the main stakeholder in the implementation of government authority, government officials have the authority to support the implementation of strategic programs from the government, this is to ensure the welfare of the community based on the established rules followed by the delegation of tasks in the form of *bestuurzorg*. It is the government's responsibility to provide services and is not permitted to refuse if it is related to services to the community as long as it is still included in the realm of government authority, this makes the government have an obligation to provide a way out if stagnation occurs in the process. In practice, government officials often take actions outside of written statutory regulations, this is a form of consequence of the fact that existing laws and regulations have loopholes and have been left behind from the development of the times, changes in values, and the increasing or emerging new problems as a result of the development of science and technology.

In state administrative law, the implementation of policies or actions not stipulated in written legal provisions can be justified. This is based on the principle of legality at the operational stage in the field so that the implementation of the intended rules can be carried out dynamically, efficiently, and effectively. The form of authority in question is discretion. Therefore, in reality, when viewed from its implementation in the field, the use and existence of discretion within the applicable regulatory system is essential to complement any shortcomings and weaknesses in the principle of legality (Budi Susilo, 2015).

Based on Article 1 number 9 of Law Number 30 of 2014 concerning Government Administration, it states that: "Discretion is a decision and/or action determined and/or carried out by a government official to overcome concrete problems faced in the administration of government in the case of laws and regulations that provide choices, do not regulate incompletely or are unclear, and/or there is government stagnation."

In every period of government, there are targets to be achieved and to achieve the goals of the country, public officials as an extension of the government in implementing its policies act in accordance with the authority they have, this includes actions related to the law, especially in the form of decisions (Lotulung, 2013). Government officials in making or taking decisions use their authority to act in accordance with the law (legal authority) and this becomes the basis for their power or as a source of power. In terms of authority, it means the ability to do or not do something by placing the law as a guideline. In its implementation, authority has requirements that must be met because the form of legal action produced concerns the wider community (Manan, 2004).

From the explanation related to the meaning of authority of government officials, it is necessary to know with certainty about the source of how this authority is obtained by officials according to its nature, there are three types, namely (Indroharto, 2000):

a. Optional authority

In its implementation, this authority is based on norms which in the regulations determine when and under what circumstances this authority is exercised.

b. Bound authority

In the basic regulations, norms have been regulated to determine the content of the decisions to be taken.

c. Discretionary authority

In basic regulations, the authority granted is not binding but rather public officials can carry out actions taken based on their interpretation.

In its application, discretionary authority not binding but the basic regulations provide a scope of freedom to the public officials concerned.

Indroharto, a constitutional law expert, argues in his book that discretion is essentially the freedom taken to decide on a policy or the freedom to provide observation regarding what is good or bad. Indroharto also divides discretion into two patterns, namely (Indroharto, 2000):

a. Freedom to assess objectively, which is applied when the norms in the law are vague even though they are essentially intended as objective legal norms, because it is difficult to provide an explicit formulation.

b. Freedom to assess subjectively, namely in its application, freedom is given to carry out one's own policy, because the law gives authority to government officials to determine for themselves the decisions that must be taken when facing concrete events.

If seen from the explanation above, the authority of immigration officials in rejecting immigration based on immigration reasons is obtained based on discretionary nature (Giuntella, et.al., 2018), namely in its implementation, immigration rejection is based on the assessment of immigration officials and their personal interpretation to select foreigners who wish to enter the territory of Indonesia. Meanwhile, based on the pattern of the implementation of discretion in the form of immigration rejection based on the freedom to assess objectively, which is applied because the norms in the law are vague, in Article 13 the reasons for rejection have been locked ten reasons for immigration rejection so that a discretionary policy is needed in the form of the emergence of new legal norms in Regulation of the Minister of Law and Human Rights Number 44 of 2015 which is a complement to the reasons for rejection contained in Law Number 6 of 2011.

In Article 22 of Law Number 30 of 2014 concerning Government Administration, paragraph (1), discretion may only be exercised by authorized Government Officials. Furthermore, in paragraph (2), every use of Discretion by Government Officials is aimed at:

Article 22

- a. Carrying out government administration
- b. Filling the legal gap
- c. Providing legal certainty; and
- d. Overcoming government stagnation in certain circumstances for the benefit and public interest.

Further information regarding discretion in Article 24 of Law Number 30 of 2014 concerning Government Administration stipulates that government officials must fulfill the following requirements in implementing discretion:

Article 24

- a. in accordance with the objectives of Discretion as referred to in Article 22 paragraph (2);
- b. does not conflict with the provisions of statutory regulations;
- c. in accordance with general principles of good governance;
- d. based on objective reasons;
- e. does not give rise to a Conflict of Interest; and
- f. done in good faith.

3.1.4. Refusal of Foreigners on Immigration Grounds as a Matter of Discretion

Based on the explanation of discretion mentioned previously, it can be concluded that discretion is a decision and/or action of government officials who make decisions under certain conditions or in urgent circumstances required to provide solutions to a problem being faced. Related to the decision on immigration reasons applied by immigration officials in imposing a refusal on foreigners who wish to enter Indonesian territory, can it be said to be a valid decision and not contrary to Article 13 of Law 6 Number 13 of 2011?

Based on the results of research carried out by the author, the application of immigration reasons in the form of discretion as the basis for rejecting foreigners is justified because it fulfills the elements of implementing said discretion:

- a. Implemented by Government Officials

In this case, government officials according to Article 1 number 3 of Law Number 30 of 2014:

"Government Agencies and/or Officials are elements that carry out Government Functions, both within the government and other state administrators"

Based on government regulations regarding overall government administration, the Government Administration Officials or Agencies that have the authority to make discretionary decisions are:

- 1) President;
- 2) Ministers or Ministerial level officials;
- 3) Commander of the Indonesian National Armed Forces and Chiefs of Staff of the Army, Navy and Air Force;
- 4) Chief of the National Police;
- 5) Chairperson of Commission/Council and equivalent Institutions;
- 6) Governor;
- 7) Regents and Mayors;
- 8) Echelon I Officials in the Central and Provincial Governments;
- 9) Regional Secretary of Regency/City;
- 10) Agency Leaders. Operational officials who have the authority to make discretionary decisions because their duties are directly related to public services, such as:
 - a) Head of the State Police Resort ;
 - b) Sub-district Head

In terms of carrying out immigration functions, Article 3 of Law Number 6 of 2011 states that:

Article 3

- (1) To carry out the Immigration Function, the Government establishes Immigration policies.

- (2) Immigration policy is implemented by the Minister.
- (3) Immigration functions along the Indonesian border are carried out by Immigration Officers, which include Immigration Checkpoints and border crossing posts.

b. Carrying out State Administration

In order for public services to be carried out optimally and support the government's strategic programs, the state administration has been given the freedom to act on its own initiative to overcome problems in this case by refusing on immigration grounds, while immigration grounds themselves have not been stated in Article 13 of Law Number 6 of 2011 which aims to overcome complex problems with quick handling.

c. Filling the Legal Gap

Considering that in Article 13 of Law Number 6 of 2011 the reasons for rejection have been limited to only ten immigration reasons, this has resulted in the ineffectiveness of implementing selective immigration policies in filtering and ensuring that only useful people are allowed to enter Indonesian territory, so that additional regulations (Regulation of the Minister of Law and Human Rights) are needed in the form of authority of government officials as regulated in Law Number 30 of 2014, namely discretion.

d. Providing Legal Certainty

With discretion, immigration reasons can be justified when applied to refuse an immigration permit. This also provides legal certainty, as Article 13 of Law Number 6 of 2011 has established grounds for immigration refusal.

e. Overcoming government stagnation

Overcoming government stagnation under certain circumstances for the benefit and public interest. What is meant by government stagnation is the inability to carry out government activities as a result of deadlock or dysfunction in the administration of government.

In this case, it is related to Article 13 of Law Number 6 of 2011 which has locked ten immigration reasons and this has caused government stagnation because in fact in its implementation in the field there are cases of foreigners who must be refused entry but are not stated in Article 13. This has given rise to the emergence of new legal norms to address this problem in the form of a Ministerial Regulation of Law and Human Rights. However, because Article 13 has been locked, this new legal norm is justified in its implementation in the form of discretion. when making decisions and/or actions to deal with government stagnation, according to Article 25 of Law Number 30 of 2014:

"Government officials are required to notify their superiors before using discretion and report to their superiors after using discretion."

In its implementation, immigration reasons have also fulfilled discretionary authority and must be able to fulfill the requirements as stated in Article 24 of Law Number 30 of 2014, namely, one of which must be in accordance with the General Principles of Good Governance as stated in Article 10 of Law Number 30 of 2014, including:

a. Legal certainty

is a principle in a state of law that prioritizes the basis of statutory regulations, propriety and justice in every policy of state administration, which can be interpreted as meaning that a person who has obtained a legal decision from a state administrative body or official must have the rights obtained based on the decision respected.

b. Benefits

has the intention that there are benefits that must be prioritized in a balanced manner in this case the use of discretion as the basis for implementing a refusal using immigration reasons.

c. Impartiality

which means that government agencies/or officials must be neutral in implementing decisions and/or actions by looking at various aspects for the benefit of the parties as a whole.

d. Accuracy

This means that in taking action or implementing decisions related to discretion, it must be based on careful consideration supported by complete information and documents so that the intent and purpose of the action taken can be legally recognized.

e. Do not abuse authority

This is fulfilled by ensuring that decision-making based on discretion is carried out with the aim of maintaining state sovereignty and selecting foreigners, not exploiting the authority that is in his possession for personal gain.

f. Openness

This is proven by the existence of regulations and information that can be accessed by the public.

g. Public interest

fulfilled because the purpose of implementing this discretion is ultimately implemented for the welfare and benefit of the public.

h. Good service

This means that in providing timely services, it must be in accordance with procedures and have clear service standards and be in accordance with applicable regulations.

In the framework of government administration, general principles of good governance is present as a form of written regulation that has the power to control every action and policy of the government, this also fully applies to the implementation of immigration rejection as a form of discretion of immigration officials. If seen from the principle of benefit as one of the conditions that must be fulfilled in general principles of good governance in the implementation of discretion, it is clear that the reason for immigration is implemented to apply new legal norms in the form of immigration reasons to complement the laws and regulations that do not regulate completely regarding the reasons for rejection of foreigners (Miller, 2013), which in the end the benefits that will be achieved are to create security and welfare of the community because only people who are not dangerous and useful can enter the territory of Indonesia. Furthermore, the principle of accuracy is also fulfilled, namely the emergence of new norms in the form of reasons for rejection on the basis of immigration as one of the discretionary measures to overcome the stagnation of the government (Kukathas, 2013) as a consequence of Article 13 of Law Number 6 of 2011 which has locked immigration reasons to only ten immigration reasons. Ultimately, the purpose of applying immigration reasons as the basis for refusal is carried out with good intentions and goals, namely to maintain the welfare, public benefit and sovereignty of the Indonesian state (Carens, 2013).

Of course, in its implementation, the discretion that grants government officials, in this case immigration officials, the authority to take action based on their own interpretation and assessment, must meet the requirements of the general principles of good governance, namely the prohibition on abuse of authority. In other words, any policy or action based on discretion issued by immigration officials regarding the rejection of foreigners will be categorized as deviant if the decision contains elements of arbitrariness and is contrary to the public interest.

Based on the explanation above, it can be concluded that the use of immigration grounds as a basis for refusing entry to Indonesia for foreigners can be justified within the realm of discretion because existing laws and regulations have not yet regulated it or because the laws and regulations governing immigration grounds are unclear and this is done in urgent circumstances for the public interest, so that discretionary authority arises in the form of a Regulation of the Minister of Law and Human Rights. The urgent circumstances in this case meet the criteria for the use of discretion because it concerns the selection process for foreigners at immigration checkpoints that must be carried out/completed quickly and accurately because it concerns the public interest, in this case national security and state sovereignty. This is also in line with the theory of law enforcement where immigration agencies enforce the law in accordance with established regulations. Although the reasons for refusing immigration are supported by discretionary reasons, this is solely to maintain the security and sovereignty of the Indonesian state. Therefore, a policy or action that is not fully based on law is something that can be permitted as long as the policy or action does not conflict with the rules and laws.

3.2. Legal Force of Article 106 Paragraph (2) Letters C and D of Minister of Law and Human Rights Regulation Number 44 of 2015 Regarding Article 13 of Law Number 6 of 2011 Reviewed from the Hierarchy of Legal Norms

3.2.1. Hierarchy of Legislation in Indonesia

Every statutory regulation must have a legal basis in a higher-level regulation and this requires that lower-level statutory regulations must not conflict with higher-level statutory regulations. The consequence that occurs if there is a lower-level statutory regulation that conflicts with a higher-level regulation is that the regulation can be annulled by law.

Based on the explanation above, a new problem arises, namely that the text of Article 13 of Law Number 6 of 2011 has been locked in only ten reasons for immigration rejection and then the emergence of new legal norms regarding the reasons for immigration rejection in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015. The question is, does the emergence of this new legal norm not conflict with the Hierarchy of Legal Norms applicable in Indonesia? Based on Article 7 paragraph (1) of Law Number 12 of 2014 concerning the Formation of Legislation, it is stated regarding the hierarchy of legislation applicable in Indonesia. The types and hierarchy of legislation consist of:

The types and hierarchy of statutory regulations consist of:

- a. 1945 Constitution of the Republic of Indonesia ;
- b. Decree of the People's Consultative Assembly;
- c. Laws /Government Regulations in Lieu of Laws ;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regional Regulations; and
- g. Regency/City Regional Regulations.

From the hierarchy of statutory regulations above, there is no mention of the existence of Ministerial Regulations; however, the existence of ministerial regulations is regulated in Article 8 paragraph (1) of Law Number 12 of 2011 which reads:

"Types of statutory regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers , bodies, institutions or commissions of the same level which are established by law or by the Government on the orders of law , the Provincial People's Representative Council, the Governor, the Regency/City People's Representative Council, the Regent/Mayor, the Village Head or those of the same level."

From the text of the article above, the author emphasizes the phrase ".. Regulations stipulated by ... ministers... ". Based on this, it can be assessed that the existence of ministerial regulations is a type of statutory regulation and its existence is recognized based on Law Number 12 of 2011.

3.2.2. Position of Ministerial Regulations in the Hierarchy of Legislation

Based on the provisions of Article 22 of Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011, it is necessary to stipulate a Regulation of the Minister of Law and Human Rights concerning Procedures for Inspection of Entry and Exit into Indonesian Territory at Immigration Checkpoints.

The importance of the minister's position within an institution can be seen from the provisions on state ministries in Chapter V, which is separate from Chapter II on state government authority (Asshiddiqie, 2006) . Law Number 39 of 2008 on State Ministries states that each minister is responsible for certain state affairs. Important affairs include:

- a. Government affairs whose ministerial nomenclature is expressly stated in the 1945 Constitution of the Republic of Indonesia;
- b. Government affairs whose scope is stated in the 1945 Constitution of the Republic of Indonesia; and
- c. Government affairs in the context of sharpening, coordinating and synchronizing government programs.

The importance of the existence and position of the minister in carrying out governmental powers and also efforts to carry out government affairs in his field, the minister is given the authority to form legislation. However, regulations formed by the minister in the form of ministerial regulations are not mentioned in the hierarchy of statutory regulations as mandated in Article 7 paragraph (1) of Law Number 12 of 2011, however, in the explanation of Article 8 paragraph (1) and paragraph (2) of Law Number 12 of 2011 which states that Ministerial Regulations are regulations stipulated by the minister based on the content of the material in the context of organizing certain affairs in government and organizing certain government affairs in accordance with the provisions of the Laws and Regulations.

From these provisions it can be seen that the emergence of ministerial regulations is motivated by various specific matters in government, namely matters that have become the affairs of the relevant Ministry and matters that have been stipulated by statutory regulations.

The existence of the Regulation of the Minister of Law and Human Rights Number 44 of 2015 in order to support the implementation of state administration affairs in terms of Procedures for the Implementation of Foreigner Examination at Immigration Checkpoints. However, the point of the author's discussion in the formulation of this problem is the existence of the sound of the Article in the Minister of Law and Human Rights, especially Article 106 paragraph (2) letters c and d which appears while in Law Number 6 of 2011 as a higher regulation it is not sounded and has been locked.

3.2.3. 3. Legal Force of Article 106 paragraph (2) letters c and d of Minister of Law and Human Rights Regulation Number 44 of 2015 concerning Procedures for Inspection of Entry and Exit into Indonesian Territory at Immigration Checkpoints against Article 13 of Law Number 6 of 2011 concerning Immigration

Immigration is an institution that plays a very strategic role in maintaining national sovereignty and security. Article 1, number 1 of Law Number 6 of 2011 concerning Immigration states that:

"Immigration is the matter of the movement of people entering or leaving the territory of Indonesia and its supervision in order to maintain the sovereignty of the state."

Based on the text of this article, it can be concluded that Immigration has the authority to conduct immigration supervision of people entering or leaving Indonesian territory. This supervision is carried out by conducting immigration checks at immigration checkpoints. This is also based on the direction of Indonesia's immigration policy, namely the selective immigration policy, which requires that anyone entering Indonesian territory must be someone who can provide benefits and not endanger the security and sovereignty of the Indonesian state. Meanwhile, Article 32 of Minister of Law and Human Rights Regulation Number 44 of 2015 stipulates that if during an immigration inspection, the officer finds no problems, the examiner can grant approval for entry or exit by affixing an entry or exit mark on the travel document.

During immigration checks, immigration officials may refuse entry to foreigners who, based on their assessment and immigration requirements, do not meet the requirements for entry into Indonesia. The immigration official has the authority to refuse entry to the foreigner. The refusal is carried out by providing reasons for the immigration refusal as stated in Article 13 of Law Number 6 of 2011 and Article 106 of Minister of Law and Human Rights Regulation Number 44 of 2015.

However, over time, the use of rejections based on Article 13 of Law Number 6 of 2011 has become less effective. This is because the article has limited the criteria for immigration rejections to only ten reasons, which means that the legal validity of immigration rejections outside the ten reasons in Article 13 is questionable. This is because,

in addition to limiting Article 13 to only ten immigration reasons, this article also does not provide space for other regulations to further regulate the issue of immigration rejections.

In reality, a new legal norm regarding immigration refusals has emerged in Article 106 of Minister of Law and Human Rights Regulation Number 44 of 2015, and an additional paragraph has been added to the regulation. The comparison between the reasons for refusal in Law Number 6 of 2011 and Minister of Law and Human Rights Regulation Number 44 of 2015 is as follows:

Table 2: Immigration Refusal Reasons for Foreigner

Article 13 of Law Number 6 of 2011	Article 106 of the Minister of Law and Human Rights Regulation Number 44 of 2015
(1) Immigration officers will refuse entry to Indonesian territory to foreigners if the foreigner: a. his name is listed on the Deterrence list b. does not have a valid and valid Travel Document; c. having fake immigration documents; d. do not have a visa, except those who are exempt from the obligation to have a visa e. has provided false information in obtaining a visa; f. suffering from an infectious disease that is dangerous to public health; g. involved in international crimes and transnational organized crime; h. included in the wanted list for arrest from a foreign country; i. involved in treasonous activities against the Government of the Republic of Indonesia; or j. included in the network of practices or activities of prostitution, human trafficking, and human smuggling.	(1) Immigration officers may refuse entry to Indonesian territory to a foreigner if the foreigner is a. His name is listed on the blacklist b. Not having valid and current travel documents c. Have fake immigration documents and/or visas d. Not having a Visa, except those exempt from the requirement to have a Visa e. Has provided false information in obtaining a visa f. suffering from an infectious disease that endangers public health g. involved in international crimes and transnational organized crime; h. included in the wanted list for arrest from a foreign country i. involved in treasonous activities against the Government of the Republic of Indonesia; or j. included in the network of practices or activities of prostitution, human trafficking, and human smuggling. (2) Immigration officers can also refuse entry to Indonesian territory to foreigners in the following cases: a. not listed in the crew list of the means of transport or the passenger list b. do not have sufficient living expenses while in Indonesia; c. endanger security; or d. disturbing public order.

From the table above, it can be seen that in Article 106 paragraph (2) of Regulation of the Minister of Law and Human Rights Number 44 of 2015, a new norm has emerged regarding the reasons for immigration rejection which has not been included in Article 13 of Law Number 6 of 2011 as a higher regulation. This is certainly inconsistency when viewed from the hierarchy of statutory norms because in his theory Hanskelsen is of the opinion that legal rules are a tiered and layered arrangement in a hierarchy. The validity of lower norms applies, is based on and has a source in higher norms and so on.

The main problem is that the application of the reasons for rejection based on Article 106 paragraph (2) letters c and d is still being used today. Meanwhile, the impacts that could arise as a result of the consequences of the emergence of new legal norms in the form of a regulation on law and human rights that do not comply with the hierarchy of applicable legal norms are:

a. Impact on foreigners who are refused entry into Indonesian territory

The application of the grounds for refusal based on Article 106 of Ministerial Regulation Number 44 of 2015 certainly has a direct impact on foreigners who are the primary subjects of immigration refusals. Indonesia, which is currently focusing on the tourism sector to increase foreign exchange, must continue to improve itself in this regard related to regulations concerning foreigners. The impact is that foreigners who are refused entry into Indonesian territory based on reasons in the Ministerial Regulation that do not comply with the hierarchy of legal norms can receive complaints from foreigners who are knowledgeable about the laws and regulations. Of course, this is not good for Indonesia's image in the eyes of the international community. Indonesia, which is known as a country based on the rule of law, has an unclear hierarchy of laws and regulations.

b. Impact on immigration officers in the field

Immigration officers who are an extension of the government, in this case the immigration agency, reject foreigners at the Immigration Checkpoint. In its implementation, officers must have a strong basis in the form of regulations to be a weapon because officers have a big responsibility as gatekeepers of the country to select and ensure that only useful people can enter the territory of Indonesia. Therefore, it is very important for immigration officers at the Immigration Checkpoint to clearly understand the basis for rejecting foreigners who will be refused entry into the territory of Indonesia. In reality, the regulations used so far as the basis for rejecting immigration, namely Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015, are in fact contradictory to Article 13 of Law Number 6 of 2011 as a higher regulation. How could it not be that Article 13 of Law Number 6 of 2011 has locked the reasons for rejection to only 10 immigration reasons and does not provide room for additions in other regulations. Meanwhile, in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015, a new norm appears, namely in paragraph (2). Although ultimately the aim of the emergence of this new legal norm is to maintain state sovereignty, this cannot be justified when viewed from the perspective of the hierarchy of legal norms.

c. Impact on Immigration Agencies

Immigration as one of the law enforcement agencies in Indonesia must certainly have laws and regulations that can support the principle of legal certainty to be the basis for its implementation by immigration officials. Although in its implementation, immigration rejection becomes the absolute sovereignty of Indonesia in this case Indonesian immigration to reject foreigners who are not useful in accordance with the principle of selective immigration policy, nevertheless, Indonesia as a country of law must be able to show a good image, namely by having a set of appropriate regulations because in this case it directly touches foreigners who indirectly bring Indonesia's good image in the eyes of the international community.

The worst risk is if the rejected foreigner questions the reason for the rejection against him, and finds out that there is a gap between Article 13 of Law Number 6 of 2011 and Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015, then the reason for the rejection against the foreigner will not have legal force and will make this matter a dispute in state administration.

Law Number 5 of 1986 concerning the State Administrative Court
Article 53

- (1) A person or civil legal entity who feels that their interests have been harmed by a State Administrative Decision may submit a written lawsuit to the competent court containing a demand that the disputed State Administrative Decision be declared null and void or invalid, with or without a claim for compensation and/or rehabilitation.
- (2) The reasons that can be used in a lawsuit as referred to in paragraph (1) are:
 - a. The State Administrative Decision being contested is contrary to the applicable laws and regulations;
 - b. The State Administrative Agency or Official at the time of issuing the decision as referred to in paragraph (1) has used its authority for a purpose other than that for which the authority was granted;
 - c. The State Administrative Agency or Official when issuing or not issuing a decision as referred to in paragraph (1) after considering all interests related to the decision should not lead to the decision being taken or not being taken.

Based on this article, it can be concluded that Article 106 paragraph (2) letters c and d of the Minister of Law and Human Rights Regulation Number 44 of 2011 can be the object of a lawsuit in the State Administrative Court, because it provides a decision of rejection for reasons that do not comply with those stated in the applicable laws and regulations.

Based on the three impacts that could occur or have even occurred, adjustments are needed to the Minister of Law and Human Rights Regulation that regulates the reasons for immigration rejection, or legislation is needed that is equivalent to Law Number 6 of 2011 to justify the implementation of Minister of Law and Human Rights Regulation Number 44 of 2015, especially regarding the reasons for immigration rejection so that in the end its implementation does not conflict with the hierarchy of legislation.

Basically, the application of reasons for immigration rejection based on Article 13 of Law Number 6 of 2011 and the emergence of new legal norms related to reasons for immigration rejection in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015 have good and the same goal, namely to maintain state sovereignty and support strategic government policies. Therefore, the implementation of rejection of foreigners using the new legal norms contained in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015 must continue to be implemented. The presence of Law Number 30 of 2014 concerning Government Administration is a way out in its implementation. Based on the results of the author's research, the application of reasons for rejection as stated in Regulation of the Minister of Law and Human Rights Number 44 of 2015 concerning Procedures for Entry and Exit of Indonesian Territory at Immigration Checkpoints can be justified because this falls within the realm of discretion in accordance with the laws and regulations regulated in Law Number 30 of 2014 concerning Government Administration.

4. Conclusion

Based on data from the Immigration Checkpoint sector and the discussion description, it can be concluded that the use of reasons for rejection outside of Article 13 of Law Number 6 of 2011 can be justified because it falls within the realm of immigration officer discretion. Although in this Article the provisions regarding reasons for immigration rejection have been locked to only ten reasons for immigration rejection and there are no provisions that regulate further regarding the reasons for immigration rejection. Based on information from the results of interviews with Immigration Officers at Soekarno Hatta Checkpoint said that the basis for immigration officers to state reasons for immigration rejection outside of Article 13 of Law Number 6 of 2011 is a form of discretionary policy. Based on Law Number 30 of 2014, it states that one of the requirements for implementing discretion is the existence of government stagnation in this case, Article 13 of Law Number 6 of 2011 concerning Immigration has locked into ten immigration reasons which causes the application of the article to be vague (Wellman & Cole, 2011). Based on this, a discretionary policy is needed in the form of the emergence of a new legal norm in the form of Article 106 of the Minister of Law and Human Rights Regulation Number 44 of 2015 which complements the reasons for rejection contained in Article 13 of Law Number 6 of 2011.

According to Hans Kelsen in his theory, legal norms must have levels and layers in a hierarchy, where lower norms apply, are based on and originate from higher norms. If seen from the perspective of the hierarchy of laws and regulations, normatively the application of Article 106 paragraph (2) letters c and d of Regulation of the Minister of Law and Human Rights Number 44 of 2015 has contradicted Article 13 of Law Number 6 of 2011 which has locked the reasons for rejection to only ten reasons for rejection of immigration. If it continues to be applied, the consequences that could arise could have an impact on Indonesia's image as a country of law, plus this could also be the object of a lawsuit in the State Administrative Court based on Article 53 of Law Number 5 of 1986 concerning the State Administrative Court because it provides a rejection decision for reasons that are not in accordance with those stated in the applicable laws and regulations. Based on the impacts that could occur or have even occurred, adjustments are needed to the Regulation of the Minister of Law and Human Rights or laws and regulations that are equivalent to Law Number 6 of 2011 to justify the implementation of Regulation of the Minister of Law and Human Rights Number 44 of 2015, especially regarding the reasons for immigration rejection, so that its implementation does not conflict with the hierarchy of legal norms. Considering the importance of the reasons for rejection contained in Article 106 paragraph (2) letters c and d of Regulation of the Minister of Law

and Human Rights Number 44 of 2015 to maintain the sovereignty and security of the state, these regulations must continue to be implemented. Based on the results of the author's research, it can be concluded that the application of the reasons for rejection as stated in Regulation of the Minister of Law and Human Rights Number 44 of 2015 can be justified because this falls within the realm of discretion in accordance with the laws and regulations regulated in Law Number 30 of 2014.

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References

- Ali, Z. (2021). Legal Research Methods. Sinar Grafika.
- Arifin, R. (2018). Refusal of Foreigners to Enter Indonesia Through Immigration Checkpoints at International Airports: Absolute Sovereignty. *Jurnal Kajian Keimigrasi*, 1(1).
- Ansori, L. (2015). Government Discretion and Accountability in Governance. *Jurnal Juridical*, Vol. 2(No. 1 June 2015).
- Asshiddiqie, J., & Syafa'at, M. A. (2012). Hans Kelsen's Theory of Law and the Constitution.
- Budi Susilo, A. (2015). The Meaning and Criteria for Discretionary Decisions and/or Actions of Public Officials in Achieving Good Governance. *Journal of Law and Justice*, 4.
- Carens, J. (2013). *The ethics of immigration*. Oxford University Press.
- Cole, P. (2014). Beyond reason: The philosophy and politics of immigration. *Critical Review of International Social and Political Philosophy*, 17(5), 503-520.
- Düvell, F. (2003). Some reasons and conditions for a world without immigration restrictions. *ACME: An International Journal for Critical Geographies*, 2(2), 201-209.
- Indradi, Maria Farida. (2005). Legal Science.
- Indrohartono (2000). Efforts to Understand the Law on State Administrative Courts (Book 1). Sinar Harapan Library.
- Kukathas, C. (2013). The case for open immigration. *Contemporary debates in applied ethics*, 376-388.
- Legiani, Wika Hardika, Ria Yunita Lestari, H. (2018). Hermeneutics: Journal of Hermeneutics. *Journal of Hermeneutics*, 4(1).
- Lotulung, P.E. (2013). State Administrative Law and Power. Salemba Humanika.
- Manan, B. (2004). The Development of the 1945 Constitution. FH UII Press.
- Miller, D. (2013). Immigration: The case for limits. *Contemporary debates in applied ethics*, 359-375.
- Park, S., & Kim, G. (2019). Factor structures of reasons for immigration among older Asian and Latino immigrants in the United States. *Innovation in aging*, 3(4).
- Ousey, G. C., & Kubrin, C. E. (2018). Immigration and crime: Assessing a contentious issue. *Annual Review of Criminology*, 1(1), 63-84.
- Siallagan, H. (2016). The Ambiguity of the Indonesian State Law Concept. *Sociohumaniora*, 18(2).
- Sjahriful, Abdullah. (2005). Introducing Immigration Law. Grafika Indonesia.
- Starke, J.G. (2015). Introduction to International Law. Sinar Grafika.
- Tan, D. (2021). Legal research methods: Examining and reviewing methodology in conducting legal research. *Nusantara: Journal of Social Sciences*, 8(8), 2463-2478.
- Testaverde, Mauro, Harry Moroz, C.H.H. &, & Achim, S. (2017). Migration in Search of Opportunities.

Wellman, C. H., & Cole, P. (2011). *Debating the ethics of immigration: Is there a right to exclude?*. Oxford University Press.