

Penerapan asas ultimum remedium dalam tindak pidana keimigrasian = The application of the principle of ultimum remedium in immigration crime

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Abstrak

Penegakan hukum Keimigrasian di Indonesia mengalami banyak permasalahan akibat tidak pastinya peraturan dalam Undang-Undang Keimigrasian, karena adanya kewenangan diskresi yang diberikan kepada Pejabat Imigrasi untuk memilih apakah akan memberikan tindakan sanksi Administrasi atau sanksi Pidana. Penelitian ini bertujuan untuk mengetahui bagaimana penerapan asas ultimum remedium dalam Undang-Undang Keimigrasian, faktor-faktor yang menyebabkan Pejabat Imigrasi menggunakan sanksi Administrasi atau sanksi Pidana dan bagaimana praktik penegakan hukum Keimigrasian di Indonesia. Dalam penelitian ini, jenis Penelitian yang digunakan adalah penelitian normatif, dengan menggunakan pendekatan sejarah, undang-undang dan konseptual. Hasil penelitian menyimpulkan bahwa cukup dengan penerapan tindakan sanksi administrasi berupa Deportasi, denda dan Penangkalan dapat menyelesaikan proses penegakan hukum keimigrasian secara cepat, sederhana dan biaya ringan sehingga asas ultimum remedium dapat diterapkan dalam penegakan hukum Keimigrasian. Penjatuhan sanksi administrasi dapat diterapkan kepada semua pelanggaran dan kejahatan dalam Undang-Undang Keimigrasian, kecuali terhadap korban perdagangan orang dan penyelundupan manusia. Sebelum menjatuhkan sanksi pidana harus dipertimbangkan dampak dari pelanggaran dan kejahatan yang terjadi apakah pelanggaran dan kejahatan dapat di toleransi oleh masyarakat atau meresahkan masyarakat. Praktek penerapan sanksi pidana keimigrasian di Indonesia masih mengalami kendala diantaranya overcrowded Lembaga Perasyarakatan, Rudenim, peningkatan biaya operasional setiap kasus, pengungsi yang tinggal tanpa batasan waktu, dan kurangnya koordinasi antara pejabat Imigrasi dengan Kepolisian RI.

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Immigration law enforcement in Indonesia has many problems due to uncertain regulations in the Immigration Act, because of the discretionary authority granted to Immigration Officials to choose whether to provide administrative sanctions or criminal sanctions. This study aims to find out how the application of the ultimum remedium principle in the Immigration Act, factors that cause Immigration Officials to use Administrative sanctions or Criminal sanctions and how Immigration law enforcement practices in Indonesia. In this study, the type of research used is normative research using historical, legal and conceptual approaches. The results of the study concluded that sufficient implementation of administrative sanctions in the form of Deportation, fines and deterrence could solve the immigration law enforcement process quickly, simply and at a low cost so that the principle of ultimum remedium can be applied in the enforcement of Immigration law. Administrative sanctions can be applied to all violations and crimes under the Immigration Act, except for victims of trafficking and people smuggling. Before imposing a criminal sanction, it must be considered the impact of the violation and the crime that occurred whether the violation and crime can be tolerated by the community or disturbing the community. The practice of implementing immigration criminal sanctions in Indonesia is still experiencing problems in overcrowded Correctional Institutions, Rudenim, increased operational costs for each case, refugees who live without time limits, and

lack of coordination between Immigration officials and the Indonesian Police.