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GOVERNMENT THESIS

*A critical analysis of Indonesia's policy on Free Visa
During 2015-2019 Period: An Intention of Indonesian
Immigration Law*

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ABSTRACT

This paper critically analyzes the application of free visa policy during 2015-2019 period in Indonesia from the point of view of immigration law. There are 3 research questions that the author answers in this thesis, the first is about the legal foundations of Indonesia's visa-free policy, the second is about whether or not the free visa policy is against immigration law and the last is about the impact of the free visa policy. The author uses mixed method research to answer the research questions by using secondary data collection techniques. Findings demonstrate that this policy should be evaluated by the Indonesian government and the author suggests further research to analyze more deeply the negative impact of this visa-free policy, especially from the security aspect. The role of immigration officials on the negative impact of free visa policy can also be used as further research.

Keywords:

Free Visa Policy, 2015-2019 time period, Indonesian Immigration Law

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Chapter I

Introduction

1. Background

On March 2, 2016, the Indonesian government issued a free visa policy as regulated in Presidential Regulation (Perpres) No. 21 of 2016. This policy means that a total of 169 countries were exempted from the obligation of having visa to enter Indonesian territory. But, of these countries, only 15 reciprocated and provided the same rights for Indonesian citizens wishing to travel to these countries (reciprocal principle). The main purposes of this visa exemption when entering Indonesia is to strengthen the tourism sector so that it can improve the country's economy and society. The policy was an initiative of the Indonesia Ministry of Tourism (Kementerian Pariwisata) due to the belief that international openness is one of the key concepts which will increase the number of foreign nationals' visit the country (Ruslan, 2016). Therefore, with the aim to boosting national economy, it is important to deregulate the policy to streamline access for foreign nationals entering the country. In other words, expectations that the increase in the number of foreigners' visits will result in a huge amount of money spent in the country. Likewise, this policy is argued as a smart move of the government (Ruslan, 2016) because it can provide many other positive aspects, not only in the tourism sector, but also in the promotion of culture, arts, culinary, labor and so on. However, from an immigration perspective, the granting of this free visa must pay attention to the principle of reciprocity and must ensure domestic security where only useful foreigners are allowed to enter and be in Indonesian territory. However, the existence of this free visa policy which has only limited application of the principle of reciprocity (only 15 countries out of 169 countries do) makes this policy questionable. Coupled with the absence of initial screening for foreigners who want to enter Indonesian territory, it is difficult for the Government to obtain sufficient information about the destination of foreigners who come to Indonesia. This is because with the free visa

program, foreigners only need to bring a valid passport and show a return ticket or a ticket to another country and then they will obtain the free visa facility.

This process can certainly threaten the security of the Indonesian state by international crimes such as human trafficking, drug trafficking or visa abuse. The granting of free visa to Indonesia from 169 countries is not appropriate because it does not enable the immigration officer to have a robust secure visa application process that is capable of monitoring and controlling the traffic of foreigners entering Indonesian territory. Additionally, this policy is not in accordance with what is mandated by Article 43 paragraph (2) letter a of Law No. 6 of 2011 concerning Immigration which states that in making a free visa policy, the Indonesian government must pay attention to the principle of reciprocity between the Indonesian state and the country that will be granted free visa facilities.

In this essay, the author will first discuss the history of the implementation of the free visa policy. Second, the author will analyze why the free visa policy is against the law through the lens of the Stufenbau theory and Interpretation theory. Finally, the author will analyze the effectiveness of this policy through a before-after approach that will see how the impact before and after the visa-free policy is implemented, especially on aspects of the growth in the number of foreign tourists and security aspects.

2. Research Questions

This research paper has three research questions that will be examined in this thesis, namely:

1. What are the legal foundations of Indonesia's free visa policy?
2. Is the free visa policy contrary to Indonesia's Immigration Act Number 6 of 2011?
3. What is the impact of this free visa policy on the growth of foreign tourist numbers and the impact on the security of the Indonesian state?

3. Goal of the Research

Research on this free visa policy has a time frame from 2015 to 2019. Starting from 2015 when the policy was issued by the President of Indonesia, then until it was limited in 2019 which coincided with the worldwide Covid-19 pandemic which resulted in closing or tightening of international borders. This meant that the mobility of people was very limited, especially for those who want to make tourist visits. Accordingly, the author will not analyze Indonesia's free visa policy from 2020 to the present. Currently, there are passports holders from nine countries that can enter the territory of Indonesia using the free visa facility, namely Brunei Darussalam, the Philippines, Cambodia, Laos, Malaysia, Myanmar, Singapore, Thailand, Vietnam, all of which apply the principle of reciprocity.

The Indonesian Minister of Tourism, Uno, (Anonymous, 2021) said that he would evaluate Indonesia's free visa policy on the grounds of sustainable development that accommodates the aspirations of other actors who requested a free visa policy before the pandemic (2015-2019). What Uno conveys is in line with the objectives of the author's research on this free visa policy. In analyzing this policy, the researcher aims to provide an objective and scientific view of the effectiveness of the Indonesian free visa policy during 2015-2019 period. As already identified, due to the COVID-19 pandemic, the free visa policy was suspended between 2020 until early 2022. It has since reopened in a very limited manner. The researcher hopes that the analysis can be used as a reference or report card to inform stakeholders in the Indonesian government stakeholders namely President of Indonesia, Ministry of Tourism, Ministry of Law and Human Rights (Directorate General of Immigration) and others regarding the free visa policy and use the findings to improve the free visa policy after the COVID-19 pandemic ends.

Chapter II

Method of Research

1. Approach, Data Analysis and Data Collection Technique

This paper uses mixed methods research. According to Johnson et al (2007, p.123). Mixed methods research is a type of research that combines elements of qualitative and quantitative research approaches. This study employs a qualitative document analysis (Karppinen & Moe, 2019) to analyze official documents such as laws, regulations, reports, policy briefs, position papers by public sector organizations relating to the free visa policy. This study is reviewing secondary data (Flowerdew & Martin, 2005, p. 65) which is collected from reports, regulations, and publications. Data sources are publicly accessible and mainly from books, journal articles and the data will be analyzed and interpreted. Governmental documents such as legislation, policies are the key sources. The author chose this secondary data collection technique because this technique offers various official data related to free visa policy issues that researchers need (Hox & Boeije, 2005, p. 596). In addition, this technique is also very easy for writers to access because of the open data types provided by professionals and low cost (Cheng & Phillips, 2014, p. 374).

The project uses qualitative methods of policy analysis to answer the research questions, especially the first and second research questions in this thesis, namely what are the legal foundations of Indonesia's free visa policy and is the free visa policy contrary to Indonesia's Immigration Act Number 6 of 2011? the author agrees with Pierce (2008) who stated that qualitative methods are very suitable for studying, understanding and explaining the complexities of social and political life. For this reason, a qualitative approach is very appropriate to use to answer the first and second

questions regarding the legal foundations of the free visa policy in Indonesia and the existence of the visa policy when it is associated with immigration law. This qualitative approach examines potential free visa policy lessons for the Indonesian Directorate General of Immigration (DG Immigration) as one of the vital stakeholders in the formulation and implementation of this policy. According to Dunlop (2017) in a policy, identification of concepts, principles, paradigms, procedures must be studied and measured. This concerns lessons that can be taken in terms of policy instruments, policy issues, or feasibility studies that cannot be separated from political factors.

This paper also uses data in the form of the number of foreign tourists (quantitative approach) who enter Indonesia after the enactment of the free visa policy. This quantitative approach is needed to answer the author's last research question in this thesis. The author will analyze the data and later the author will combine this qualitative and quantitative approach to answer the three research questions to understand the phenomenon of this free visa policy better. Furthermore, data and information regarding free visa policies, especially regarding statements by state officials regarding the target of foreign tourists every year starting from 2015-2019, the authors obtained from online articles or social media. Then information about violations committed by foreign tourists where the data and information are obtained from mass media analysis such as KOMPAS, Tempo, hukumonline, CNNIndonesia. These online articles provide the latest issues related to free visa policy in Indonesia since a few of official and academic reports published on this issue. To test the validity of the data, the triangulation method was used by combining the author's participant observations during his time as an immigration official at the Directorate General of Immigration and supplemented by secondary data support, both qualitative and quantitative to strengthen the author's argument.

The data that has been collected is then be analyzed using the basic concept, namely the rule of law concept. As a basic concept, this concept will then use hierarchy theory or Stufenbau Theory and interpretation theory, especially grammatical and systematic interpretation to analyze the author's two initial research questions. To answer the first research question, the author will also add the concept of conflict of values which is inevitable in every policy making. Then to analyze the data to answer the questions of the three authors, the author will use a simple before-after concept that compares the impact before and after the free visa policy is implemented.

2. Limitation

Due to words limit, the analysis in this paper will not cover all aspects of the free visa policy in Indonesia. Therefore, as an area for future research, it would be better if further research was carried out on this free visa policy, especially regarding aspects of why this free visa policy does not meet the expected target. The author will present data on the number of foreign tourists entering Indonesia from the beginning of this policy until 2019 because in early 2020 the Covid-19 pandemic occurred which made Indonesia tighten its borders so that foreign tourists could not enter Indonesian territory using free visa facilities.

On the other hand, there are some weaknesses in the analytical method used by the author, which are identified in the remainder of this paragraph. Bowen (2009, p.31-32) emphasizes that there are obstacles such as selectivity bias, information or data that is not detailed and difficulties in accessing data in document analysis techniques or secondary data research. Then the limitations on published data are also an obstacle (Flowerdew & Martin, 2005, p. 70) (Smith & Smith Jr., 2008, p. 22). This happens because of the confidential nature of the data which is not allowed to be published.

3. Thesis Structure

This thesis consists of five chapters. Chapter one is an introduction which describes the background of the research which provides the reason why the author did the research on the free visa policy and what are the problems with the policy. In this chapter the three research questions are identified. Chapter two is an outline of the methodology which discusses the mixed method of the research and its limitations. Then, chapter three is a literature review that deals with the concept of the rule of law, visa and free visa policy, immigration act and hierarchy perspective (A law must not conflict with a law that has a higher position), policy cycle, before and after approach. Chapter four discusses the findings and analysis of the research project. Finally, the project concludes with the summary of the project, the suggestion for the stakeholders and the recommendation.

Chapter III

Literature Review

The free visa policy is a policy developed and implemented by the Indonesian government in an effort to increase the number of foreign tourists coming to Indonesia. In every policy-making, there are challenges that make its formulation difficult, such as the complexity of issues and others (Howlett, et al., 2009), including the making of this free visa policy. The main issue related to this free visa policy is the security issue (Czaika&Neumayer, 2017) where the loosening of mobility rules for foreign nationals to enter Indonesian territory can disrupt the stability of Indonesia's domestic security. According to Prideaux (2005), a visa is a tool to control a person's mobility, the application of a strict visa policy can deter unwanted foreigners such as terrorists, drug dealers, human traffickers and others. In this sense, the visa exemption policy has the potential to disrupt domestic security aspects. The complexity of the issues in the formulation of this visa can be seen in the conflict of values in every policy-making, including the Indonesian free visa policy.

Conflict of values in making a public policy is unavoidable. Le Grand (2007) claimed that trade-offs between values are unavoidable, thus requiring policy makers to be able to manage this problem. In the context of the free visa policy, the government prefers to allocate economic value over security value. This is what prompted the author to conduct research on this free visa policy. This is the value contained in the Indonesian immigration law, which is a law that regulates the mobility of people to enter and leave the territory of Indonesia.

The next issue is the number of countries that have been granted the free visa facility, which has increased significantly in less than 10 months. As of March 31, 2003, only 15 countries or administrative regions were granted this facility, but on June 10, 2015 the government added another 30 countries so that a total of 45 countries or administrative regions have received this

facility. Then on March 10, 2016, the number of countries that got free visa was 169 countries or administrative areas. Of the 169 countries that are granted free visa facilities, only 15 countries provide free visa facilities for Indonesian citizens who want to go to their country for tourist purposes. This means that the reciprocity value does not apply in this free visa policy. This review of literature review will analyze the free visa policy using the values contained in immigration law. The concept of the rule of law is the main concept in this research. Then the use of hierarchy theory or Stufenbau Theory and interpretation theory becomes the analytical knife for the author to answer research questions. The concepts and theories that the author chose are different from the concepts and theories that have been carried out by several previous researchers who researched free visa policies such as Kim et al., 2018; Pham et al., 2017; Shafiullah et al., 2019; Yudhistira, et al, 2021; Indrady, 2020. Then the author will also discuss the impact of this free visa policy for approximately 4 years starting from 2015 to 2019. The author will not discuss this free visa policy from 2020 until now because that period is the Covid-19 pandemic period. 19 which makes the mobility of people very limited due to the closure or tightening of the border.

1. Rule of Law

Based on the Third Amendment of 2001 to the Indonesian constitution or the 1945 Constitution of the Republic of Indonesia or UUD 1945 (BPK, 2017c), the phrase "state of law" or rechtsstaat is re-inserted in Article 1 paragraph (3) which reads "negara Indonesia adalah negara hukum". "The State of Indonesia is a State of Law". [translated by author]. Previously, the phrase "Indonesian rule of law" was only found in the General Explanation of the 1945 Constitution, point I on the Government System, which stated that: 'Indonesia is a state based on law (rechtstaat) and not based on mere power or machtstaat' (Mukti Arto, 2001, pp. 18-19). This is in accordance with the

opinion of Dahlan Thaib (2009, p.25-26) which states that Indonesia is a state of law, which can be seen from the Preamble, Body, and Explanation of the 1945 Constitution: 1) The opening of the 1945 Constitution contains in the first paragraph the words "justice"; in the second paragraph the term "fair"; and in the fourth paragraph of the words: "social justice" and "just humanity". All of these terms indicate the notion of the rule of law, because one of the goals of the rule of law is to achieve justice.

As a consequence of the adoption of the rule of law, the law must be the basis for every action of the ruler and his people. According to Asshiddiqie (1999, p.146-147) the use of authority or power by state authorities and/or government authorities cannot be separated from the restrictions set out in law, because the use of authority comes from the concept of power sharing which is a feature or character of the rule of law. Conventionally, the concept of the rule of law is always associated with the principles of government that must be based on law and the constitution, the division or separation of state power into different functions. Indonesia itself adheres to the separation of powers into executive, legislative and judicial powers. The executive institution is the presidential institution or governor/mayor/regent, the legislative body is the people's representative council at the central and regional levels and the judicial institution is the judicial institution, both the supreme court and the constitutional court.

In making free visa policies, the governing body that makes it is the executive body. Visa policies are made based on presidential regulations. Presidential Regulation itself is a form of legislation. Indonesia itself recognizes the existence of a hierarchy of laws and regulations, namely the constitution, laws, government regulations, presidential regulations and regional regulations. Based on the theory of hierarchy of norms or *stufenbau* theory from Hans Kelsen (2010) that a rule must not conflict with a rule whose position is higher. In the context of the free visa policy,

which is a presidential regulation, the author suspects that it is contrary to immigration law, which is above the presidential regulation.

In the procedural context, the free visa policy has fulfilled it where it is made in the form of a Presidential Regulation. This is in line with what is mandated by the immigration law where a free visa policy must be made in a Presidential Regulation. However, the research focus of the author is from the substance aspect of this policy where the author agrees with the opinion of Indrady (2020) who considers that this policy is problematic. However, what distinguishes the author's paper from his paper is the point of view and theories that the author uses in this thesis.

2. Immigration Law

Immigration law is a very important perspective in this paper. This perspective is what the author uses as the main reference in analyzing Indonesia's free visa policy from 2015-2019. For this reason, the concept of Indonesian immigration law number 6 of 2011 is included in this chapter.

Affairs regarding the traffic of people entering and leaving the territory of Indonesia are regulated in immigration law, namely Law number 6 of 2011 concerning Immigration (immigration law).

Article 1 Number (1) of the immigration law states that (BPK, 2017b): “Keimigrasian adalah urusan lalu lintas orang yang masuk atau keluar Wilayah Indonesia dan pengawasannya dalam rangka menjaga tegaknya kedaulatan negara”. ["Immigration is a matter of traffic of people entering or leaving the Indonesian Territory and its supervision in order to maintain the upholding of state sovereignty" (translated by author)]. Meanwhile, Article 1 Number (3) states that there are 4 immigration functions, namely: community service, law enforcement, state security, and community welfare development. Based on these functions, it can be interpreted that in addition to the security function, immigration law also regulates economic functions.

In addition to immigration functions, immigration law also has an important principle, namely the principle of selective immigration policy. This principle is the embodiment of state sovereignty that must be respected (Santoso, 2017: 37). The selective immigration policy is made in order to protect the national interest, which means that only foreigners who provide benefits and do not endanger security and public order are allowed to enter and be in Indonesian territory. Based on the legal principles regulated in Article 75 and Part One Elucidation of Law no. 6 of 2011, this selective policy requires (BPK, 2017b) that:

“a. hanya orang asing yang berguna yang boleh masuk dan berada di wilayah Indonesia; b. hanya orang asing yang tidak membahayakan keamanan dan ketertiban umum yang boleh masuk dan berada di wilayah Indonesia; c. orang asing harus mematuhi peraturan perundang-undangan di Indonesia; d. orang asing yang masuk dan berada di wilayah Indonesia harus sesuai dengan maksud dan tujuannya”.

[“a. only useful foreigners are allowed to enter and be in the territory of Indonesia; b. only foreigners who do not endanger security and public order are allowed to enter and be in the territory of Indonesia; c. foreigners must comply with the legal regulations in Indonesia; d. foreigners who enter and are in the territory of Indonesia must be in accordance with their aims and objectives” (translated by author)].

Based on this principle, only foreigners who can provide benefits for the welfare of the people, nation and state, do not endanger security and order, and are not hostile to the people who can enter and leave the territory of Indonesia (Indra, 2015: 2). In the event of a violation the Immigration Officer can take administrative actions in the form of inclusion in the list of prevention or deterrence, restrictions, changes, or cancellations of Stay Permits, imposition of fees, even deportation from Indonesian territory (see Article 75 paragraph 2 of Law No. 6 of 2011).

People who visit the Indonesian Territory, enter or leave, must have requirements, one of which is the possession of a visa. Law Number 6 Year 2011 article 1 number 18 regulates the definition of visa, which reads (BPK, 2017b):

“Visa Republik Indonesia yang selanjutnya disebut Visa adalah pernyataan tertulis yang diberikan oleh pejabat yang berwenang pada Perwakilan Republik Indonesia atau di tempat lain yang ditentukan oleh Pemerintah Republik Indonesia yang memuat persetujuan bagi Orang Asing untuk melakukan perjalanan ke Wilayah Indonesia dan menjadi dasar pemberian Izin Tinggal.”

"Visa of the Republic of Indonesia, hereinafter referred to as visa, is a written statement given by an authorized official at the Representative of the Republic of Indonesia or in other places determined by the Government of the Republic of Indonesia which contains approval for Foreigners to travel to the Territory of Indonesia and becomes the basis for granting a Stay Permit". [translated by author]

Law Number 6 of 2011 in Chapter V concerning Visas, Entry Signs, and Stay Permits Part One regulates Visas in general. In it, it is written that Indonesia has 4 types of visas, including: diplomatic visas, service visas, visit visas, and limited stay visas.

Diplomatic visas are granted to foreigners holding diplomatic passports and other passports to enter Indonesian Territory to carry out diplomatic tasks, as stated in Law Number 6 of 2011 article 35. Diplomatic visas are the authority of the Ministry of Foreign Affairs and their implementation is carried out by official foreign service at the Representative of the Republic of Indonesia. Service visas are granted to foreigners holding official passports and other passports who will travel to the Indonesian Territory in the context of carrying out non-diplomatic official duties from the foreign government concerned or international organizations. The service visa is the authority of the

Ministry of Foreign Affairs and its implementation is carried out by foreign service officials who are at the Representatives of the Republic of Indonesia. Limited Stay Visa is regulated in Law Number 6 Year 2011 article 39 which reads (BPK,2017b):

“Visa tinggal terbatas diberikan kepada Orang Asing: a. sebagai rohaniwan, tenaga ahli, pekerja, peneliti, mahasiswa, penanam modal, orang lanjut usia, dan keluarganya, serta orang asing yang kawin secara sah dengan warga negara Indonesia, yang akan melakukan perjalanan ke Wilayah Indonesia untuk bertempat tinggal dalam jangka waktu terbatas; atau b. untuk bekerja sama mengerjakan kapal, alat terapung, atau instalasi yang beroperasi di wilayah perairan nusantara, laut teritorial, landas kontinen, dan/atau Zona Ekonomi Eksklusif Indonesia.”

“A limited stay visa is granted to Foreigners: a. as clergy, experts, workers, researchers, students, investors, the elderly, and their families, as well as foreigners who are legally married to Indonesian citizens, who will travel to the Indonesian Territory to reside for a limited period of time; or b. in order to join forces to work on ships, floating equipment, or installations operating in the territorial waters of the archipelago, the territorial sea, the continental shelf, and/or the Indonesian Exclusive Economic Zone”. [translated by author]

From the description of the article above, it can be seen that there are 4 types of visas that apply in Indonesia, namely diplomatic, service, visit and limited stay visas. The free visa policy that applies from 2015-2019 is a policy that is included in the visit visa family which is regulated by the Ministry of Law and Human Rights through the Indonesian Directorate General of Immigration. This policy eliminates the obligation to have a visa for certain foreign nationals (169 countries/administrative areas) to be able to enter the territory of Indonesia for 30 days and for certain activities, namely Tourism, Family, Social, Arts and Culture. Government Duties, Giving

lectures or attending seminars, Participate in international exhibitions, Attending meetings held with the head office or representatives in Indonesia and, Continuing the journey to another country. Based on this type of activity, the author categorizes this visit free visa policy into the visit visa family. This is because the 4 types of visas recognized in Indonesia are differentiated based on the types of activities allowed. Article 38 of the immigration law states that the types of activities for a visit visa are visits for government duties, education, social culture, tourism, family, journalism or stopping to continue the journey to other countries.

The visit visa itself can also be issued upon arrival at the immigration checkpoint either at the airport, seaport or land border. This visa is called a visa on arrival (VOA). In the visit visa cluster there are at least 3 types of visas that have the same type of activity, namely first, visas obtained by applying at the Indonesian embassy, then VOA and thirdly free visa. These three types of visas can later be used by foreign tourists to enter the territory of Indonesia. For a visit visa submitted through the Indonesian embassy, there is no limit to the number of countries, except for Israel which does not have diplomatic relations with Indonesia. This means that all countries are allowed to apply but whether it will be approved later or not is the authority of the officials there. As for VOA, only 69 countries are allowed to enjoy this facility, namely:

| | | |
|------------------------------|--------------------|---------------------------------|
| 1. South Africa; | 24. Iceland; | 47. Poland; |
| 2. Algeria; | 25. Italy; | 48. Portugal; |
| 3. United States of America; | 26. Japan; | 49. Qatar; |
| 4. Argentina; | 27. Germany; | 50. People's Republic of China; |
| 5. Australia; | 28. Deleted; | 51. Romania; |
| 6. Austria; | 29. Canada; | 52. Russia; |
| 7. Bahrain; | 30. South Korea; | 53. Saudi Arabia; |
| 8. Belgium; | 31. Kuwait; | 54. New Zealand; |
| 9. Holland; | 32. Deleted; | 55. Slovakia; |
| 10. Brazil; | 33. Latvian; | 56. Slovenia; |
| 11. Bulgarian; | 34. Libya; | 57. Spain; |
| 12. Czech; | 35. Liechtenstein; | 58. Suriname; |

| | | |
|--------------------|-----------------|------------------|
| 13. Cyprys; | 36. Lithuania; | 59. Sweden; |
| 14. Denmark; | 37. Luxembourg; | 60. Switzerland; |
| 15. Arab Emirates; | 38. Maldives; | 61. Taiwan; |
| 16. Estonian; | 39. Malta; | 62. East Timor; |
| 17. Fiji; | 40. Mexico ; | 63. Tunisia; |
| 18. Finland; | 41. Egypt | 64. Turkey; |
| 19. Hungary; | 42. Monaco; | 65. Greece. |
| 20. India; | 43. Norway; | 66. Andorra; |
| 21. England; | 44. Oman; | 67. Belarusian; |
| 22. Deleted; | 45. Panamanian; | 68. Croatia |
| 23. Ireland; | 46. France; | 69. Armenia |

Citizens of these countries are only required to have a nationality passport with a validity period of more than 6 months, have a return ticket to their home country or to another country and pay a VOA fee of IDR 500,000. Then they will get a residence permit in Indonesia for 30 days and can be extended for another 30 days by paying a fee of IDR 500,000 at the local immigration office.

As for the free visa facility, 169 countries are allowed to enjoy it, namely:

| | | | |
|------------------------|---------------------|----------------|----------------------------|
| 1. South Africa | 43. Gabon | 85. Macedonia | 128. Sao Tome and Principe |
| 2. Albania | 44. Gambia | 86. Maldives | 129. Zealand New |
| 3. Algeria | 45. Georgia | 87. Malawi | 130. Senegal |
| 4. United States | 46. Ghana | 88. Malaysia | 131. Serbia |
| 5. Andorra | 47. Grenada | 89. Mali | 132. Seychelles |
| 6. Angola | 48. Guatemala | 90. Malta | 133. Singapore |
| 7. Antigua and Barbuda | 49. Guyana | 91. Morocco | 134. Cyprus |
| 8. Saudi Arabia | 50. Haiti | 92. Mauritania | 135. Slovakia |
| 9. Argentina | 51. Honduras | 93. Mauritius | 136. Slovenia |
| 10. Armenia | 52. Hungary | 94. Mexico | 137. Spain |
| 11. Australia | 53. Hong Kong (SAR) | 95. Egypt | 138. Sri Lanka |
| 12. Austria | 54. India | 96. Moldova | 139. Suriname |
| 13. Azerbaijan | 55. England | 97. Monaco | 140. Swaziland |
| 14. Bahamas | 56. Ireland | 99. Mozambique | 141 Sweden |
| 15. Bahrain | 57. Iceland | 100. Myanmar | 142. Switzerland |

| | | | |
|-----------------------------|----------------------|---------------------------------------|---------------------------|
| 16. Bangladesh | 58. Italy | 101. Namibia | 143. Taiwan |
| 17. Barbados | 59. Jamaica | 102. Nauru | 144. Tajikistan |
| 18. Netherlands | 60. Japan | 103. Nepal | 145. Holy See Vatican |
| 19. Belarus | 61. Germany | 104. Nicaragua | 146. Cape Verde |
| 20. Belgium | 62. Cambodia | 105. Norway | 147. Tanzania |
| 21. Belize | 63. Canada | 106. Oman | 148. Thailand |
| 22. Benin | 64. Kazakhstan | 107. Palau | 149. Timor Leste |
| 23. Bhutan | 65. Kenya | 108. Palestine | 150. Togo |
| 24. Bolivia | 66. Marshall Islands | 109. Panama | 151. Tonga |
| 25. Bosnia and Herzegovina | 67. Solomon Islands | 110. Ivory Coast | 152. Trinidad and Tobago |
| 26. Botswana | 68. Kiribati | 111. Papua New Guinea | 153. Tunisia |
| 27. Brazil | 69. Comoros | 112. Paraguay | 154. Turkey |
| 28. Brunei Darussalam | 70. South Korea | 113. France | 155. Turkmenistan |
| 29. Bulgaria | 71. Costa Rica | 114. Peru | 156. Tuvalu |
| 30. Burkina Faso | 72. Croatia | 115. Poland | 157. Uganda |
| 31. Burundi | 73. Cuba | 116. Portugal | 158. Ukraine |
| 32. Czech Republic | 74. Kuwait | 117. Puerto Rico | 159. United Arab Emirates |
| 33. Chad | 75. Kyrgyzstan | 118. Qatar | 160. Uruguay |
| 34. Chile | 76. Laos | 119. Dominican Republic | 161. China |
| 35. Denmark | 77. Latvia | 120. Romania | 162. Uzbekistan |
| 36. Dominica (Commonwealth) | 78. Lebanon | 121. Russia | 163. Vanuatu |
| 37. Ecuador | 79. Lesotho | 122. Rwanda | 164. Venezuela |
| 38. El Salvador | 80. Lichtenstein | 123. Saint Kitts and Nevis | 165. Vietnam |
| 39. Estonia | 81. Lithuania | 124. Saint Lucia | 166. Jordan |
| 40. Fiji | 82. Luxembourg | 125. Saint Vincent and the Grenadines | 167. Greece |
| 41. Philippines | 83. Macao (SAR) | 126. Samoa | 168. Zambia |
| 42. Finland | 84. Madagascar | 127. San Marino | 169. Zimbabwe |

For this free visa facility, journalism activity is not allowed. This is different from the previous 2 types of visas. People obtaining a visa-free visit are given a residence permit for 30 days which cannot be extended. For this free visa facility, a valid nationality passport plus a return ticket or a

ticket to another country are required as well as a return ticket to or to another country. Visits using this facility are free of charge.

3. Stufenbau Theory

The author has presented a brief description of the 2 main concepts referred to in this paper, namely the concept of the rule of law and the concept of immigration law. To answer the research questions, the author will use these two concepts as the basis for analyzing the issue of free visa policy. After having a foundation in the form of a concept, the author needs an analytical knife to analyze the issue of Indonesia's free visa policy. For this reason, the author uses several theories to analyze this issue, the first is the Stufenbau theory or the theory of the hierarchy of norms (hierarchy) from Hans Kelsen and Hans Nawiansky.

The tiered legal theory (Stufenbau) is also known as the norm hierarchy, where a norm must not conflict with the norms above it. Kelsen (Wacks, 2014, p.202) describes a legal system that has interlocking norms (interlocking norms) that originate from a general norm (the most general ought/groundnorm) to a more concrete norm (the most particular or concrete). According to Dimiyati (2010, p.69) Kelsen's Stufenbau theory is a legal building that is expected to be used anywhere. This is supported by Hans Nawiasky with *theorie von stufenbau der rechtsordnung* who stated that in addition to the hierarchical structure of norms that tiered from the highest to the lowest, as stated by Kelsen, there is also a grouping of legal norms within a country.

In other words, the grundnorm is the highest source for the validity of a rule that exists in a country. Kelsen admits that the form of grundnorm in each legal system is different (Soeprapto, 2000, p.27). Grundnorm can take the form of a written constitution or a dictator's order. In Indonesia, it is known that the constitution is the basis and the highest law. The constitution is the 1945

Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). In Stufenbau's legal theory, the grundnorm is the highest part of the hierarchy, in other words, all legal rules are based on the constitution. The relationship and hierarchy between grundnorm and other norms are as follows: "Grundnorms-norms-subnorms"

According to Kelsen (Ridwan and Sodik, 2010, p.250), the norm hierarchy only recognizes superordination and subordination, does not recognize coordination. In a further development, Hans Nawiasky described with *theorie von stufenbau der rechtsordnung* which outlined that in addition to the arrangement of norms in the state, which are layered and tiered from the highest to the lowest, there is also a grouping of legal norms within the state, which includes state fundamental norms (*staatsfundamentalnorn*), rules and regulations. basic state (*staatsgrundgesetz*), formal laws (*formalle gesetz*), and implementing regulations and autonomous regulations (*verordnung en outonome satzung*). (Kelsen, 1973, p.124). Besides being famous for the Stufenbau theory, Kelsen is also the initiator of the importance of maintaining a basic law through an institution so that the constitution (*grundnorm*) is not injured (Asshiddiqie & Safa'at, 2006, p.170). The institution is the Constitutional Court. In Indonesia, there are 2 types of judicial institutions. In addition to the Constitutional Court, there is also a Supreme Court whose function is to keep a rule from being injured. The Constitutional Court has the function of examining the Law against the Constitution, while the Supreme Court has the function of examining the regulations under the Law against the Law.

Stufenbau theory in Indonesia was adopted in Law Number 12 of 2011 concerning the Establishment of Legislations (hereinafter referred to as the Law on the Establishment of Legislations. This is stated in the provisions of Article 7 paragraph (1) of the Law on the Establishment of Legislations which states as follows (BPK, 2017a):

“Jenis dan Hirarki Peraturan Perundang-undangan terdiri dari:
Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;
Keputusan Majelis Permusyawaratan Rakyat;
Undang-Undang/Peraturan Pemerintah Pengganti Undang-undang;
Peraturan Pemerintah;
keputusan presiden;
Peraturan Provinsi; dan
Peraturan Daerah Kabupaten/Kota”.

“Types and hierarchy of Legislations consist of:
the 1945 Constitution of the Republic of Indonesia;
Decree of the People's Consultative Assembly;
Laws/Government Regulations in Lieu of Laws;
Government regulations;
Presidential decree;
Provincial Regulations; and
Regency/City Regional Regulations”. [translated by author]

In the context of the hierarchy of laws and regulations in Indonesia, the form of the Grundnorm/Basic Norm which is the highest basis and law is the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Because, in it there is a legal ideal (*rechtsidee*) which makes the Indonesian state established as well as a legal norm that becomes a benchmark for the validity of the material content of laws and regulations if a judicial review is carried out through an authorized institution (Asshiddiqie and Safa'at, 2006, p.170). Meanwhile, legal norms such as laws and

government regulations are norms that are under the Grundnorm/Basic Norm. Thus, the legal norms referred to are sourced and based on the 1945 Constitution of the Republic of Indonesia.

The main similarity between the hierarchy of norms initiated by Hans Kelsen and Hans Nawiasky lies in the layers and stratified levels that are the source and foundation and are contained in every legal norm. While the difference between the two lies in the pattern of sorting and grouping legal norms that Nawiasky explicitly does, but Kelsen on the contrary, studies more in general norms that apply at all levels.¹²

Based on these differences and similarities. Kelsen or Nawiasky's point of view by mentioning legal norms as an order made by the state is a characteristic of the flow of legal positivism, which emphasizes that there is no law outside the authority of the state, therefore making the hierarchy of norms structured, tiered and layered according to needs constitute legal politics in structuring laws and regulations. -Invitation selected country.

In the context of the free visa policy, this policy is made based on a presidential regulation which is under the law. For this reason, if this policy is considered to violate the law, the Supreme Court can test it. This test will use immigration law as a benchmark. Whether this free visa policy is against immigration law or not. To assess whether the policy is contrary to immigration law or not, the author uses the next theory, namely interpretation theory.

4. Interpretation Theory

According to Soeroso (1996, p.97) interpretation is to seek and determine the meaning of the arguments contained in the law in accordance with what is desired and intended by the legislators. There are several methods of interpretation known in interpretation theory. The author will discuss about 2 of the types of interpretation, namely grammatical interpretation and systematic

interpretation. This is because the author will use these two theories in analyzing the issue of free visa policy, especially to answer the second research question, namely is the free visa policy contrary to Indonesian immigration act number 6 of 2011?

Language is an important tool for law. Therefore, law is bound to language. The interpretation of the law will always basically be an explanation in terms of language. The starting point here is everyday language (Mertokusumo, 1996, p.151). Meanwhile, Systematic or Dogmatic Interpretation is a model of interpretation looking at the structure related to the sound of other articles both in the law and with other laws (Kansil & Christine, 2000, p.39).

In analyzing the free visa policy, the author uses a grammatical interpretation of immigration law, especially the articles relating to free visa, namely Article 43 of Law no. 6 of 2011 concerning Immigration that in certain cases Foreigners can be released from the obligation to have a Visa. The author uses the Big Indonesian Dictionary (KBBI) to interpret this article. The author will also interpret the explanation of this article. Then the author performs a systematic interpretation by using other laws relating to immigration law and hierarchy theory, namely the law on the formation of legislation.

5. Before After approach

To answer the last research question, namely what is the impact of this free visa policy on the growth of foreign tourist numbers and the impact on the security of the Indonesian state? the author uses a before and after approach. This approach is a simple approach to determine the effectiveness of a program or policy. According to betterevaluation.org, outcome and impact evaluations are needed to examine the results of a policy. In the context of the free visa policy, the author uses a summative evaluation impact evaluation that will focus on providing advice to stakeholders

regarding the sustainability of this free visa policy, whether it is terminated or continued. The purpose of a policy can be used as a tool to measure the success of a program. In the context of this visa-free policy, the measuring instrument is the increase in the number of foreign tourists in accordance with the set target. So, it will be seen later the impact, if any, that the role of this free visa policy has before and after it is enforced, that is, was there an increase in the number of foreign tourists in Indonesia during the 2015-2019 period?

Another thing that the author discusses using the before and after approach is the other impact that this free visa policy will have after it is implemented, that is, was there a positive impact (increase in the number of foreign tourists) or was there a negative impact (The occurrence of crimes such as trafficking in persons, misuse of visas and others). In the event that if there is a negative impact in the application of this free visa policy, the provisions as contained in the immigration law which in principle regulate the mobility of people entering and leaving will be applied to and from Indonesia.

Immigration Law, apart from regulating administrative matters such as visa permits and residence permits, also regulates administrative sanctions and criminal law in the form of bodily coercion such as imprisonment or fines.

Administrative sanctions contained in the immigration law are:

1. Inclusion in the list of Prevention or Deterrence;
2. limitation, change, or cancellation of Stay Permit;
3. Prohibition of being in one or several certain places in the Indonesian Territory;
4. the obligation to reside in a certain place in the Indonesian Territory;
5. imposition of load charges; and/or 6. deportation from the Indonesian Territory.

Meanwhile, the criminal sanctions are in the form of imprisonment and/or fines. In the case of a foreign citizen sentenced to prison, after the person has finished serving their prison term, deportation will be carried out to his country of origin.

6. Policy Cycle

The last lens that the author uses is the concept of the policy cycle which is a tool used to analyze the development of a policy. The policy cycle is also often called the stages approach. The Australian Policy Handbook by Davis, Glyn, et al. (2018) classifies the policy cycle into: issue identification, policy analysis, consultation (which permeates the entire process), policy instrument development, building coordination and coalitions, program design: decision making, policy Implementation, policy Evaluation.

Overall, this chapter discusses the concepts and theories that the author uses in answering the three research questions. It begins with the concept of a rule of law and immigration law which is the initial foundation for the author to analyze Indonesia's free visa policy in the 2015-2019 period. This concept also distinguishes this paper from previous papers that have discussed a relatively similar issue, namely the free visa policy. Then the theory of hierarchy, interpretation and before and after will serve to answer the research questions in this paper. The last concept that the author uses in analyzing this policy is the concept of the policy cycle.

Chapter IV

Findings and Analysis

1. The legal foundations of Indonesia's free visa policy.

The free visa policy was originally initiated in 1967. This policy was taken in connection with Indonesia's role as one of the initiators of fostering close cooperation between fellow members of the Association of South East Nations (ASEAN) which was founded on August 8, 1967, therefore To support Indonesia's role, a policy called the ASEAN Free visa Facility was issued which is based on Government Regulation Number 26 of 1967 concerning ASEAN Free visa Facilities. Furthermore, the Director General of Immigration regulates the provisions for implementing the ASEAN Visa Free Facility for a visit for 7 days through Decree Number/Didenim/071/VI-69. Then the terms of the period were extended to 14 days through the Decree of the Director General of Immigration Number PORA/6032/12-5/76 dated June 23, 1976 concerning Changes to the ASEAN Visa Free Period which also stipulates Tabing Airport, Padang, West Sumatra as a landing port. citizens of ASEAN countries (Ditjenim, 2005, p.165).

After this free visa policy for ASEAN, in 1983 Indonesia again issued a free visa policy. Which policy this time is based on the interests of the tourism industry. To promote the tourism industry in Indonesia, the government is working hard to attract foreign tourists to Indonesia, one of the efforts made by the government is by issuing Presidential Decree No. 15/1983 on Tourism Development Policy. Where Article 1 states that foreign tourists visiting Indonesia are exempt from the obligation to have a visa. This visa exemption is granted to foreign tourists from 26 countries and granted a residence permit for 60 days, in which these countries based on the Decree of the Minister of Justice of the Republic of Indonesia Number .M.01-IZ.01.02 of 1983 are as follows (Ditjenim, 2005, p. 166):

- | | | |
|-----------------|---------------|-----------------|
| 1. West Germany | 10. Greece | 19. Switzerland |
| 2. France | 11. Denmark | 20. Canada |
| 3. Belgium | 12. Sweden | 21. Singapore |
| 4. England | 13. Finland | 22. Thailand |
| 5. Luxemburg | 14. Norway | 23. Filiphina |
| 6. Italya | 15. Iceland | 24. South Korea |
| 7. Japan | 16. USA | 25. Malaysia |
| 8. New Zealand | 17. Australia | 26. Netherland |
| 9. Spain | 18. Austria | |

As an implementing regulation, the Director General of Immigration Juklak No.F-205.IZ.o.02/1983 was issued regarding Visa Free Visits. However, unfortunately this policy is not reciprocal, because only a small number of these countries provide the same policy, namely free visa for Indonesian citizens who want to visit their country. On March 31, 2003, Indonesia finally imposed a free visa visa on the principle of reciprocity through Presidential Decree No. 18 of 2003 concerning the Free Visa for Short Visits (BVKS), which based on Article 7 of this Presidential Decree stated that Presidential Decree No. 15 of 1983 concerning Development Policy Tourism is no longer valid. This visa exemption is only granted if a country applies free visa visas to Indonesian citizens who come to that country. Initially, the BVKS policy was only intended for 11 countries, but in its development, based on Presidential Decree No. 43 of 2011 concerning the Third Amendment to Presidential Decree No. 18 of 2003 concerning Free Visa for Short Visits, the number of countries has increased to 15 countries/administrative regions, namely:

- | | |
|----------------------|-------------|
| 1. Malaysia | 9. Cambodia |
| 2. Singapore | 10. Lao |
| 3. Thailand | 11. Myanmar |
| 4. Brunei Darussalam | 12. Equador |
| 5. Filiphina | 13. Peru |
| 6. Hongkong SAR | 14. Marocco |
| 7. Macau SAR | 15. Chile |
| 8. Vietnam | |

The implementation of this BVKS is the application of the reciprocal principle. As stated by the Minister of Justice and Human Rights of the Republic of Indonesia, Yusril Ihza Mahendra (Anonymous, 2003, p.7) told that:

“penerapan prinsip resiprositas ditentukan karena pemberian visa bebas visa ke negara-negara seperti Amerika Serikat, Australia dan Korea Selatan tidak diimbangi dengan kebijakan yang sama oleh negara-negara tersebut terhadap Indonesia. Warga negara Indonesia yang ingin pergi ke Australia atau Amerika Serikat masih harus mengajukan visa ke kedutaan dengan membayar sekitar Rp 450.000 dan harus menunggu hingga tiga hari. Kalau visanya bisa keluar, Alhamdulillah, tapi kalau tidak, uangnya tidak bisa ditarik. Berkaitan dengan hal tersebut, pemerintah telah mengambil langkah untuk menyeimbangkan keadaan tersebut, yaitu dengan menghapuskan visa kunjungan singkat gratis untuk negara-negara tersebut dan menggantinya dengan memberikan layanan visa dalam dua jenis, yaitu permohonan visa reguler di perwakilan Indonesia di negara tersebut. bersangkutan dan pemberian visa on arrival (VOA) di bandara. Indonesia”

"the application of the principle of reciprocity is determined because the granting of free visa visas to countries such as the USA, Australia and South Korea is not balanced with the same policies by these countries towards Indonesia. Indonesians who want to go to Australia or the USA still have to apply for a visa to the embassy by paying around IDR 450,000 and have to wait up to three days. If the visa can be issued, Alhamdulillah, but if not, the money cannot be withdrawn. In this regard, the government has taken steps to balance the situation, namely by removing the free short visit visa for these countries and replacing it by providing visa services in two types, namely the application for a regular

visa at the Indonesian representative in the country concerned and the granting of a visa on arrival (VOA) at the airport. Indonesia". [translated by author]

Then, since the enactment of the visa on arrival policy to countries that were previously subject to Visa Free Visits based on the Decree of the Minister of Justice and Human Rights No: M-04.IZ.01.10 of 2003 concerning Visit Visas on Arrival, it shows positive benefits from the financial aspect where State Revenue Non-Tax (PNBP) in 2004 averaged US\$ 4 million per month (Ditjenim, 2005, p.245).

After being valid for more than 10 years, on June 9, 2015 the government again issued a visit free visa policy through Presidential Regulation (Perpres) No. 69 of 2015 concerning Free visa Visits. In this Presidential Regulation, BVKS is still given to 15 countries/administrative regions plus 30 other countries that are subject to Free visa Visits who are only allowed to visit Indonesia in the context of tourism activities or better known as Tourist Visit Free visa (BVKW). In this Presidential Regulation it is stated that the activities allowed for BVKW subjects who are not BVKS are only for tourism purposes and can only enter Indonesia through 5 Air Immigration Checkpoints (TPI), namely Soekarno Hatta, Ngurah Rai, Kuala Namu, Juanda and Hang Nadim and 4 Sea Immigration Checkpoints namely Sri Bintan, Sekupang, Batam Center, Tanjung Uban. Then, in following up on this new policy, the Directorate General of Immigration did not revoke the Regulation of the Minister of Law and Human Rights concerning the Eighth Amendment to the Regulation of the Minister of Law and Human Rights No.M.HH-01.GR.01.06. Year 2010 regarding Visit Visa on Arrival. This is intended to reduce the impact of potential lost PNBP originating from VOA.

A few months later, on September 18, 2015, the Presidential Regulation on BVK was amended by Presidential Decree No. 104 of 2015. In this latest Presidential Regulation, the countries subject to

BVK were added to 75 countries (BVKW) + 15 countries/administrative regions that are subject to BVKS. The TPI that foreigners can enter is increased to 5 air TPI and 9 sea TPI. Meanwhile, the places of exit increased to 29 Air, 88 Sea and 7 Cross-Border Posts as regulated in the Minister of Law and Human Rights Regulation No. 31 of 2015 concerning Immigration Checkpoints Free of Visit Visas. Then, at the beginning of 2016, to be precise on March 10, 2016 based on Presidential Decree No. 21 of 2016 concerning Visa Free Visits, the subject matter of the country was added to 169 countries which no longer distinguishes between BVK and BVKS but prohibits foreigners from engaging in journalistic activities. The types of activities allowed are:

- a) Tourism;
- b) Family;
- c) Social;
- d) Arts and Culture;
- e) Government Duties;
- f) Giving lectures or attending seminars;
- g) Participate in international exhibitions;
- h) Attending meetings held with the head office or representatives in Indonesia and ;
- i) Continuing the journey to another country.

The history of the development of free visa policy in Indonesia can be seen initially as an international political factor. The goal is to strengthen relations with fellow ASEAN members, Indonesia provided this free visa facility to countries that were members of ASEAN at that time in 1967. Policy This applies the reciprocal principle, as contained in Hammurabi (c.1792-1750BC) "eye for an eye" which in this context means that Indonesia grants free visa visas to countries that grant Indonesia free visa as well. This reciprocal issue is closely related to state sovereignty. In a

realist perspective, one of the basic assumptions is that there is no authority above the state (Wohlforth, 2008; Donnelly, 2008), the implementation of a free visa program with this reciprocal principle will guarantee the same position among countries in the international world. Hence the concept of anarchy, in a realist perspective, it can be managed properly so that relations between countries can run well too. This can also be seen from the BVKS program in 2003 where the program put forward this reciprocal principle as well.

In the free visa program in 1983 and 2015-2019, this reciprocity principle was not implemented. This shows that the economic aspect is prioritized in the formulation of this policy. The leading sector for this policy-making is the ministry of tourism which has a goal to advance Indonesian tourism. Moreover, according to the Ministry of Tourism (2020b), the largest contributor to the Indonesian economy after the palm oil industry is the tourism sector. This free visa program needs to be made to increase the number of foreign tourists to enter Indonesia. This is a common practice carried out by countries in the world that rely on the tourism sector by making policies that are pro to this sector (Kim et al., 2018; Pham et al., 2017; Shafiullah et al., 2019).

However, Indonesia must learn from past policies where previously this free visa policy was implemented but was finally canceled because it was contrary to the reciprocity principle contained in the immigration law and the ineffectiveness of the policy was implemented due to the negative impacts caused by the program (which the author will explain in the answer to the third research question). Easton (1965) values contained in society can be allocated through a public policy. However, the allocation of these values must be careful so as not to cause conflict or paradox for the community later (O'Kelly and Dubnick, 2005; Spicer, 2009).

In addition to the conflict of values as explained above, the author considers that there are problems in the formulation of the free visa policy in the 2015-2019 period. The problem is that there is no

evaluation carried out by the government before increasing the number of countries that are subject to this BVK.

The BVKS policy has a total of 15 countries/administrative regions, then on June 9, 2015 an additional 30 countries were added, namely:

| | |
|--------------------------------|--------------------------|
| 1. People's Republic of China, | 16. Belgium, |
| 2. Russia, | 17. Sweden. |
| 3. South Korea, | 18. Austria, |
| 4. Japan, | 19. Denmark, |
| 5. United States, | 20. Norway, |
| 6. Canada, | 21. Finland, |
| 7. New Zealand, | 22. Poland |
| 8. Mexico, | 23. Hungary |
| 9. England, | 24. Czech Republic |
| 10. Germany, | 25. Qatar |
| 11. France, | 26. United Arab Emirates |
| 12. Netherlands, | 27. Kuwait |
| 13. Italy, | 28. Bahrain |
| 14. Spain, | 29. Oman |
| 15. Switzerland | 30. South Africa |

Then the number of these countries was added by 45 more countries on 23 September 2015 namely:

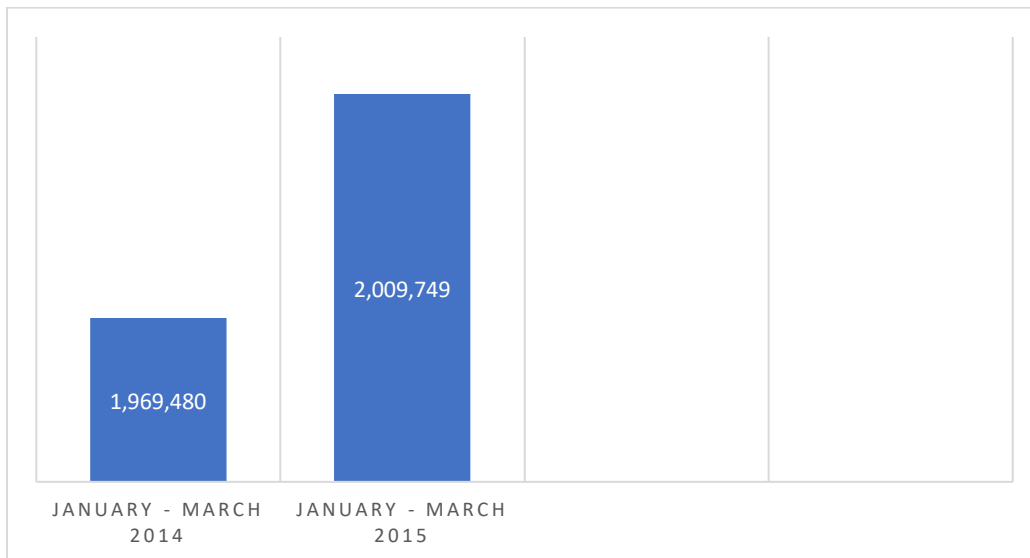
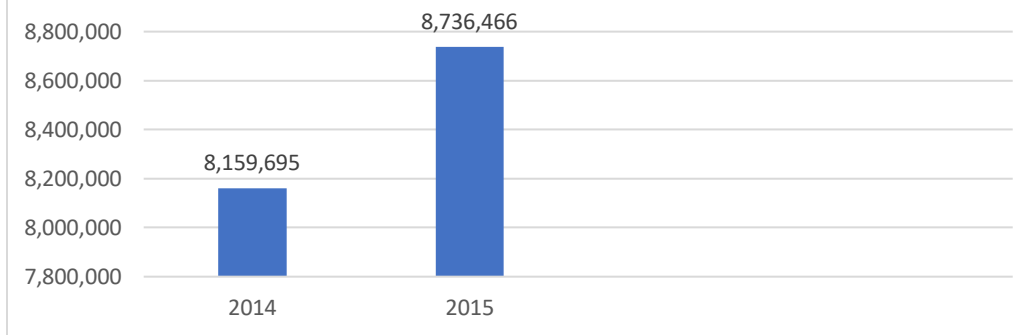
| | | |
|-------------------|--------------------|---------------------------------|
| 1. South Africa, | 26. Japan, | 51. Qatar, |
| 2. Algeria, | 27. Germany, | 52. People's Republic of China, |
| 3. United States, | 28. Canada, | 53. Romania, |
| 4. Angola, | 29. Kazakhstan, | 54. Russia, |
| 5. Argentina, | 30. Kyrgyzstan, | 55. San marino, |
| 6. Austria, | 31. Croatia, | 56 Saudi Arabia, |
| 7. Azerbaijan, | 32. South Korea, | 57. New Zealand, |
| 8. Bahrain, | 33. Kuwait , | 58. Seychelles, |
| 9. Netherlands, | 34. Latvia, | 59. Cyprus, |
| 10. Belarus, | 35. Lebanon, | 60. Slovakia, |
| 11. Belgium, | 36. Liechtenstein, | 61. Slovenia, |
| 12. Bulgaria, | 37. Lithuania, | 62. Spain, |

| | | |
|---------------|-----------------------|---------------------------|
| 13. Czech, | 38. Luxemburg, | 63. Suriname, |
| 14. Denmark, | 39. Maldives, | 64. Sweden, |
| 15. Dominica, | 40. Malta, | 65. Switzerland , |
| 16. Estonia, | 41. Mexico, | 66. Taiwan, |
| 17. Fiji, | 42. Egypt, | 67. Tanzania, |
| 18. Finland, | 43. Monaco, | 68. Timor Leste, |
| 19. Ghana, | 44. Norway, | 69. Tunisia, |
| 20. Hungary, | 45. Oman, | 70. Turkey, |
| 21. India, | 46 Panama, | 71. United Arab Emirates, |
| 22. England, | 47. Papua New Guinea, | 72. Vatican, |
| 23. Ireland, | 48. France, | 73. Venezuela, |
| 24. Iceland, | 49. Poland, | 74. Jordan, |
| 25. Italy, | 50. Portugal, | 75. Greece |

plus 15 subject countries BVK brings the total to 90 countries that are granted free visa visits.

When viewed from the time span of increasing the number of countries from 45 countries to 90 countries, it only takes approximately 3 months. The author considers that the increase in the number of countries to be 2 times the initial number in less than 100 days must have a strong enough reason, for example, there is a significant increase in the number of foreign tourists entering Indonesia within a span of 3 months after the issuance of the free visa policy so that additional the number of countries it makes sense to do. Then approximately 6 months later, on March 2, 2016, the number of countries increased to 169 countries. The author considers that this addition is not based on a thorough evaluation, it can be seen from the graph below (Directorate of Information Systems and Immigration Technology, 2016):

**COMPARATION OF CROSSING OF FOREIGNERS WITH
TOURIST DESTINATIONS THAT ENTERED THE
TERRITORY OF INDONESIA IN 2014 AND 2015**



Based on the data above, there was an increase in the number of foreign tourists entering Indonesia in 2015 but it was not significant, which only increased by 576,771 people or 1.14% compared to the previous year. Then an increase of 40,269 people or 1.02% in the period January-March 2016 compared to the same period in the previous year.

This indicates that there is no evaluation mechanism for the free visa policy before increasing the number of countries subject to the BVK. In fact, when referring to the theory of policy cycle, there

are stages that must be passed in formulating a policy. Starting from the agenda setting where the government must decide whether this free facility is a problem that must be overcome by the government as an authorized actor to choose to do or not do it in the context of making a public policy, namely a free visa policy (Dye, 2005). Howlett, et al (2009) emphasized that in the agenda setting the government must be able to identify all actors related to the free visa policy, besides what their wishes must also be known and understood by the government. So that they can be involved in formulating and implementing this free visa policy. This free visa policy was initiated by the Ministry of Tourism with the reason to support the tourism sector, but this policy is considered to exclude other actors such as the Directorate General of Immigration (Directorate General of Immigration). The security value that the author conveyed earlier, which is in conflict with economic value, is a value that is a function of the directorate general of immigration. In addition to the security function, the Directorate General of Immigration also has an economic function in carrying out its duties and this function has been reduced since the free visa policy was implemented. This can be seen from the performance accountability report of the DitjenIm government agency (Iakup, 2017) which states that the achievement of the target of non-tax state revenue (PNBP) of the Directorate General of Immigration is greatly affected by the implementation of the free visa policy where immigration PNBP receipts have decreased significantly from year to year.

| Year | PNBP |
|------|----------------------|
| 2015 | Rp 3.089.719.968.523 |
| 2016 | Rp 1.952.321.281.137 |

Therefore, the addition of the number of BVK countries should be evaluated first after being implemented and then put back into the agenda setting stage so that policies are formulated that accommodate the values or wishes of other actors such as DitjenIm. Another thing to note in this increase in the number of countries is that the inclusion of countries that are not countries that often visit Indonesia is certainly an issue in itself. This can be seen from Lakip (2017), the countries that visited Indonesia the most in 2017 were as follows: 1. China as many as 1,955,550 people, 2. Singapore as many as 1,457,823 people, 3. Malaysia as many as 1,333,788 people, 4. Australia with 1,194,847 people, 5. Japan as many as 530,436 people, 6. India as many as 496,182 people, 7. South Korea as many as 380,976, 8. United Kingdom as many as 363,810 people, 9. USA as many as 332,639 people, 10. France as many as 273,074 people, 11. Germany as many as 264,554 people, 12. Taiwan – Province of China as many as 223,915 people, 13. Netherlands as many as 206,587 people, 14. Philippines as many as 198,841 people, 15. Saudi Arabia as many as 168,160 people and other countries if accumulated as a whole as many as 1,729,664 people. In this sense, only 15 countries have contributed greatly to the number of foreigners entering Indonesia. Therefore, the author feels that the increase in the number of countries subject to BVK in less than 10 months from 15 countries to 169 countries is not based on sufficient evidence. Even the author questions why this policy has not been evaluated again after 4 years running from 2015 to 2019 before the Covid-19 pandemic spread throughout the world. Whereas the evaluation stage is an important stage in the policy cycle which functions to be able to see whether a policy is in accordance with the expected target or not.

In addition, by holding an evaluation, later policy makers can overcome the problem of value conflicts in the free visa policy. One way that policy makers can do is by using the incrementalism method by making gradual changes to the number of countries included in the BVK subject

(Steward, 2009, p.41) by looking at the evidence for a year this free visa policy has been running (Lakip , 2017), which countries enter Indonesia most often and which countries rarely enter Indonesia. Then the government can remove countries that rarely or never enter the territory of Indonesia from the list of subjects of the BVK. Then in the end the government can accommodate the value of security by applying the principle of reciprocity in this policy. This is expected to be able to reduce the value conflict that occurs.

2. Free visa policy contrary immigration law.

In the context of the immigration law, the Presidential Decree BVK is alleged to be against the Immigration Law. Hans Kelsen once said that every rule must have a hierarchy, starting from the basic norm which is the benchmark for the validity of the norms below it (Kelsen, 2010, p. 179). According to Kelsen, the norms that exist in a country are not coordinative in nature, but each norm has different levels. Here Kelsen places the constitution as the basic norm for every statutory regulation to be made, so the existing laws must not conflict with the constitution. In line with Kelsen's opinion, the principle of “*lex superior derogat legi inferiori*” applies (Mertokusumo, 2010, p. 9) [the law with a higher position overrides the law with a lower position (translated by author)]. In terms of the hierarchy of norms, the basic norm is the place where the norms below it depends. It is the same with the position of a Presidential Regulation which must not conflict with the rules above it, namely the Law or act.

Hans Kelsen's Stufenbau Theory is adopted by Indonesia, this can be seen in Law Number 12 of 2011 concerning the Establishment of Legislation. In accordance with the provisions of Article 7 paragraph (1) of Law 12 of 2011 concerning the Establishment of Legislations, the hierarchy is as follows (BPK, 2017a):

- “a) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;
- b) Keputusan Majelis Permusyawaratan Rakyat;
- c) Undang-Undang/Peraturan Pemerintah Pengganti Undang-undang;
- d) Peraturan Pemerintah;
- e) Peraturan Presiden;
- f) Peraturan Daerah Provinsi; dan
- g) Peraturan Daerah Kabupaten”

- “a) the 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 Regulation;
- f) Provincial Regulations; and
- g) Regency Regional Regulations” [translated by author]

While paragraph 2 reads: “Kekuatan hukum Peraturan Perundang-undangan sesuai dengan hierarki sebagaimana dimaksud pada ayat (1)”. [“the legal force of the Legislation in accordance with the hierarchy as referred to in paragraph (1)” (translated by author)]. In addition, elucidation of Article 7 paragraph (2) of this Law states that “yang dimaksud dengan hierarki adalah penjenjangan setiap jenis Peraturan Perundang-undangan yang didasarkan pada asas bahwa Peraturan Perundang-undangan yang lebih rendah tidak boleh bertentangan dengan Peraturan Perundang-undangan yang lebih tinggi.” [“what is meant by hierarchy is the grading of each type of Legislation based on the principle that lower Laws and Regulations must not conflict with higher Legislations” (translated by author)].

Procedurally, the existence of the Presidential Regulation regarding BVK is actually in accordance with the mandate of Law No. 6 of 2011 concerning Immigration. Article 43 of Law No. 6 of 2011 (BPK, 2017b) concerning Immigration that in certain cases Foreigners can be released from the obligation to have a Visa. Meanwhile, paragraph 2 states that Foreigners who are exempted from the obligation to have a Visa as referred to in paragraph (1) are:

“a) warga negara dari negara tertentu yang ditetapkan berdasarkan Peraturan Presiden dengan memperhatikan asas timbal balik dan asas manfaat;

b) warga negara asing pemegang Izin Tinggal yang memiliki Izin Masuk Kembali yang masih berlaku;

c) nakhoda, kapten pilot, atau awak yang sedang bertugas di alat angkut;

d) nakhoda, awak kapal, atau tenaga ahli asing di atas kapal laut atau alat apung yang datang langsung dengan alat angkutnya untuk beroperasi di perairan Nusantara, laut teritorial, landas kontinen, dan/atau Zona Ekonomi Eksklusif Indonesia.”

“a) citizens of certain countries determined based on a Presidential Regulation by taking into account the principle of reciprocity and the principle of benefit;

b) a foreign citizen holding a Stay Permit who has a valid Re-Entry Permit;

c) the captain, pilot captain, or crew on duty on the transportation means;

d) the captain, crew, or foreign experts on board ships or floating equipment that come directly with the means of transportation to operate in Nusantara waters, territorial seas, continental shelves, and/or the Indonesian Exclusive Economic Zone.” [translated by author]

From the elaboration of the article above, it can be seen that the BVK policy is in accordance with the mandate of the Law which must be established based on a Presidential Regulation. This is also in accordance with Article 13 of Law No. 12 of 2011 concerning the Formation of Legislation

which states that ““Materi muatan Peraturan Presiden berisi materi yang diperintahkan oleh Undang-Undang, materi untuk melaksanakan Peraturan Pemerintah, atau materi untuk melaksanakan penyelenggaraan kekuasaan pemerintahan”. [“The material for the content of the Presidential Regulation contains material ordered by law, material for implementing Government Regulations, or material for carrying out the administration of government power” (translated by author)]. Since the existence of this Presidential Regulation BVK is an order from the law, there is no problem with the existence of this Presidential Regulation procedurally.

However, if viewed in substance, there is a problem. Where in Article 43 paragraph 2 letter a of Law No. 6 of 2011 (BPK, 2017b) concerning Immigration states that “... dalam menetapkan bebas visa tersebut dengan memperhatikan asa timbal balik dan asas manfaat”. [“... in setting the visa exemption by taking into account the principle of reciprocity and the principle of benefit”. (translated by author)]. The meaning of the principle of reciprocity here is reciprocate, meaning that if we give free visas to a country, then that country also gives free visas to our country. Meanwhile, the principle of benefit is as stated by Jeremy Bentham (1780, p.1) claimed that the law, in this case the Presidential Decree BVK must be made in a utilitarian way, seeing its use with benchmarks based on profit, pleasure and human satisfaction. There is no good or bad in law. A good law is a law that can fulfill the principle of maximizing happiness and minimizing distress in society.

This latest Presidential Decree BVK frees visas for 169 countries, while Indonesia gets free visa only to 15 countries/administrative regions which is based on reciprocal agreements with countries that are subject to BVKS based on Presidential Decree No. 43 of 2011 concerning the Third Amendment to Presidential Decree No. 18 of 2003 concerning Free Short Visit Visa. Then the principle of benefit will be discussed in greater depth in the next sub-chapter. Because according

to Article 43 paragraph (2) letter a of Law No. 6 of 2011 concerning Immigration, there are two principles that are considered accumulatively in granting free visa visas namely the principle of reciprocity and the principle of benefit.

However, what is interesting here is the word “memperhatikan” [“pay attention” (translated by author)] in Article 43 paragraph (2) letter a of Law No. 6 of 2011 concerning Immigration. There are some who argue that with the nomenclature of paying attention to it, it is not mandatory to apply the principle of reciprocity and the principle of benefit. If seen from the Big Indonesian Dictionary, the word pay attention comes from the word take note which means to look long and carefully, to observe. Meanwhile, the word obligatory has the meaning that it must be carried out, must (KBBI, 2022). So, grammatically there is no obligation to apply the principle of reciprocity and the principle of benefit in terms of making BVK policy.

However, if you look at the Elucidation of Article 43 paragraph 2 letter a of Law No. 6 of 2011 concerning Immigration (BPK, 2017b), it states that “ yang dimaksud dengan pembebasan Visa dalam ketentuan ini misalnya untuk kepentingan pariwisata yang membawa manfaat bagi perkembangan pembangunan nasional dengan memperhatikan asas timbal balik, yaitu pembebasan Visa hanya diberikan kepada Orang Asing dari negara yang juga memberikan pembebasan visa kepada warga negara Indonesia”. [“what is meant by Visa exemption in this provision is for example for the benefit of tourism which brings benefits to the development of national development by taking into account the principle of reciprocity, namely the exemption of Visas is only granted to foreigners from countries that also grant visa exemptions to Indonesian citizens” (translated by author)]. With the editorial “only”, it can be interpreted as nothing other than or only (KBBI, 2022). This can be interpreted that can’t be granted free visa to countries that do not grant free visa to our country.

In the study of legal science, an explanation of the law may not create new rule, in the sense that an explanation may not regulate things outside those regulated by the rule. The function and role of the explanation of a statutory regulation has been regulated in Attachment I of Law 12/2011 (BPK, 2017a), among others in the figures:

- “a) 176. Penjelasan berfungsi sebagai tafsir resmi pembentuk Peraturan Perundang-undangan atas norma tertentu dalam batang tubuh. Oleh karena itu, penjelasan hanya memuat uraian terhadap kata, frasa, kalimat atau padanan kata/istilah asing dalam norma yang dapat disertai dengan contoh. Penjelasan sebagai sarana untuk memperjelas norma dalam batang tubuh tidak boleh mengakibatkan terjadinya ketidakjelasan dari norma yang dimaksud.
- b) 177. Penjelasan tidak dapat digunakan sebagai dasar hukum untuk membuat peraturan lebih lanjut dan tidak boleh mencantumkan rumusan yang berisi norma.
- c) 178. Penjelasan tidak menggunakan rumusan yang isinya memuat perubahan terselubung terhadap ketentuan Peraturan Perundang-undangan.
- d) 186. Rumusan penjelasan pasal demi pasal memperhatikan hal sebagai berikut:
 - 1) tidak bertentangan dengan materi pokok yang diatur dalam batang tubuh;
 - 2) tidak memperluas, mempersempit atau menambah pengertian norma yang ada dalam batang tubuh;
 - 3) tidak melakukan pengulangan atas materi pokok yang diatur dalam batang tubuh;
 - 4) tidak mengulangi uraian kata, istilah, frasa, atau pengertian yang telah dimuat di dalam ketentuan umum; dan/atau
 - 5) tidak memuat rumusan pendelegasian”.

“a) 176. The explanation serves as the official interpretation of the legislators on certain norms in the body. Therefore, explanations only contain descriptions of foreign words, phrases, sentences or equivalent words/terms in the norm which can be accompanied by examples. Explanation as a means to clarify the norms in the body should not result in the ambiguity of the norms in question.

b) 177. Explanations cannot be used as a legal basis for making further regulations and may not include formulations containing norms.

c) 178. The explanation does not use a formula whose contents contain covert changes to the provisions of the Legislation.

d) 186. The formulation of the explanation article by article takes into account the following:

1) does not conflict with the main material regulated in the body;

2) does not expand, narrow or add to the meaning of the existing norms in the body;

3) not to repeat the main material regulated in the body;

4) not repeating the descriptions of words, terms, phrases, or understandings that have been contained in the general provisions; and/or

5) does not contain the delegation formula” [translated by author]

According to Attachment I of Law 12/2011, the Elucidation of Article 43 paragraph (2) letter a of Law No. 6 of 2011 on Immigration is right on target because it outlines the phrase of visa exemption and at the same time provides an example, namely the tourism sector. So as for criticism of this explanation, it falls because this explanation is in accordance with the mandate of Law No. 12 of 2011 concerning the Establishment of Legislation.

Meanwhile, the function and role of an attachment is not explained in Law No. 12 of 2011 concerning the Establishment of Legislations, but it is stated in Number 192 of Attachment I to this Law that in the event that the Legislation requires an attachment, it is stated in the body that the attachment in question is an inseparable part of the Legislative Regulations. Then, according to Number 193 of Attachment I to this law, attachments may contain, among others, descriptions, lists, tables, pictures, maps, and sketches.

An example of an article in the body of laws and regulations stating that attachments are an inseparable part of laws and regulations is the regulation of Article 44 paragraph (2) of Law 12/2011 (BPK, 2017a) which stipulates that:

“Ketentuan mengenai teknik penyusunan Naskah Akademik sebagaimana dimaksud pada ayat (1) tercantum dalam Lampiran I yang merupakan bagian tidak terpisahkan dari Undang-Undang ini”.
[“The provisions regarding the technique of preparing Academic Papers as referred to in paragraph (1) are listed in Appendix I which is an integral part of this Law”. (translated by author)].

Thus, a statutory regulation that requires an attachment, for example to contain a description, table or map, may contain an attachment as an inseparable part of the statutory regulation itself. So the appendix must be read as an integral part of the articles in the body of the legislation, and has binding power like the legislation itself (Hukumonline, 2022).

After analyzing using the method of interpretation according to grammar or words and systematic interpretation uses a method that looks at all the articles and general explanations contained in the Immigration Law (Soeroso, 2001), the author considers that this Presidential Decree BVK is contrary to Article 43 paragraph (2) letter a of Law No. 6 of 2011 concerning immigration. The non-accommodation of the principle of reciprocity and in this policy is the main reason for the author to have such a belief. The significance of this reciprocity is closely related to equality

between countries. This will relate to the sovereignty of a country. When there is no equal treatment given by a country, it means that the position of the country is not equal. In international law there is a principle that says "par in parem non habet jurisdictionem", which means that every country has the same and equal position. So that the existence of this BVK Policy can make the position of the Indonesian state under the subject countries of the BVK which do not apply the principle of reciprocity to Indonesia, which totals 154 countries.

3. The impact of the free visa policy on the growth of foreign tourist numbers and the impact on the security of the Indonesian state

Initially, the visa exemption policy implementation is based on a positivist framework which mainly focuses on applying economic principles to public issues (Howlett, Ramesh & Perl 2009, p. 20). This policy prioritizes the economic aspect over the security aspect. In addition, the principle of reciprocity is also not accommodated in this policy. This will result in the threat of the domestic security sector. When viewed from the historical aspect, this policy has also been made and failed to achieve its objectives.

Furthermore, Indonesia's immigration policy is a selective policy that puts a balance between the prosperity approach and the security approach. Selective policy in the field of immigration is reflected in the obligation to have a visa for foreigners to enter Indonesian territory. Which visa is only given to foreigners who are useful and do not endanger the security of Indonesia. However, in certain cases, Indonesia also provides free visa facilities to foreigners from certain nationalities. In its application, this policy must pay attention to 2 principles, namely the principle of reciprocity and the principle of benefit. The author has discussed the principle of reciprocity in the previous sub-chapter, in this sub-chapter the author discusses the principle of benefit.

In addition to the principle of reciprocity, there is one more principle mentioned by the immigration law, namely the principle of benefit. The author agrees with Jeremy Bentham's view of the greatest happiness of the greatest number which is defined by Mangunhardjana (1999, p.231) that good actions are actions that are beneficial while bad actions are actions that cause suffering or loss. In this sense, there is no good or bad in law or policy. A good law/policy is a law/policy that can fulfill the principle of maximizing happiness and minimizing distress in society. This free visa program is intended to increase the number of foreign tourists visiting Indonesia so that it can have a positive impact on the community's economy. One of the fastest growing sectors in the world is the tourism sector which can drive economic growth (Vita and Kyaw, 2016) through trade, investment, income, taxes, and employment (Banerjee et al., 2016; Santana-Gallego et al., 2011; Su and Lin, 2014; Tang, 2012). According to UNWTO (2019a, 2019b), 1.4 billion people traveled in the world in 2018 and generated export revenue of US\$1.7 trillion. With such great potential, the government has created a free visa program (Neumayer, 2010) so that the mobility of international travelers is not hampered and does not suffer losses (Dwyer et al., 2020). This is in line with the opinion of the European Travel Commission (2018) which stated that the obligation to apply for a visa will burden international travelers both in terms of costs and processing time, so free visa is one solution to reduce barriers for international travelers (ETC, 2018; Fabian et al., 2016; Li and Song, 2013; Liu and McKercher, 2014; Nitsch, 2019). With this assumption, the Indonesian government through its Ministry of Tourism believes that the free visa program will provide benefits to the Indonesian people.

Therefore, the Ministry of Tourism has set a target for the number of visitors from abroad. Deputy for International Tourism Marketing Development, Pitana, is optimistic that with this BVK policy, the target of 12 million foreign tourist arrivals in 2016 will be achieved. This target is in line with

the target of 20 million foreign tourists visiting in 2019 (anonymous, 2016). Below is a table of targets and the number of realized foreign visitors from 2014-2019 whose data the authors took from the Indonesian Central Statistics Agency (2022).

| Year | Target (Visitor) | Realisation (Visitor) |
|-------------|-------------------------|------------------------------|
| 2014 | 9.5 Million | 9.4 Million |
| 2015 | 10 Million | 10.23 Million |
| 2016 | 12 Million | 11.5 Million |
| 2017 | 15 Million | 14.039 Million |
| 2018 | 17 Million | 15.8 Million |
| 2019 | 20 Million | 16.11 Million |

From the data above, it can be seen that every year there has been an increase in foreign visitors to Indonesia since the free visa program (2015-2019) was implemented. If the before and after approach is used, the free visa program has a good output with an increase every year. However, the target set was never achieved, except in 2015. Then the question arises whether the target set is too high or is this program a failure? The author does not agree if the target is considered too high because when compared to the target of neighboring countries such as Malaysia (before the covid19 pandemic), Indonesia's target is still below Malaysia which is 36 million foreign tourists in 2030 (anonymous, 2020a) and based on the annual report (2019) the realization of the number of their tourists in 2019 was 26,100,784 people. So, according to the author, Indonesia's target is not too high and is still realistic to be achieved, but unfortunately the target has not been achieved. In this thesis the author will not analyze why the target is not achieved. The author suggests further research on this issue. Then, did this free visa program fail? The author considers that the program failed because it did not reach the expected target. In this sense, the author would agree with Jackson that the free visa policy is not a determining factor for a person to travel abroad or not.

Jackson (1989) claimed that pull and push factors tourists make decisions to travel to a place. In terms of driving factors, there are 11 factors, namely:

“Peningkatan ego, Pembalikan Ital, Ziarah, Agama, Kesehatan, Pendidikan, Keaslian yang dirasakan, Konvensi/konferensi. Sedangkan faktor penariknya adalah iklim lokasi, promosi nasional, periklanan retail, pemasaran grosir, acara khusus, skema insentif, kunjungan teman, kunjungan kerabat, atraksi wisata, budaya, lingkungan alam dan lingkungan buatan”.

“Ego enhancement, Itual inversion, Pilgrimage, Religion, Health, Education, Perceived authenticity, Conventions/conferences. Meanwhile, the pull factors are Location climate, National promotion, Retail advertising, Wholesale marketing, Special events, Incentive schemes, Visiting friends, Visiting relatives, Tourist attraction, Culture, Natural environment and man-made environment“[translated by author].

Hence, the author would agree with UNWTO (2018) which states that the free visa policy is only one of various tourist policies, so that a country cannot rely solely on this free visa policy to attract foreign tourists to come to their country. Therefore, the opinion expressed by Jackson (1989) can be used as a reference by the Indonesian government in its efforts to improve the tourism sector. This is in line with what Azhari, Chair of the Indonesian Tourism Intellectuals Association (Anonymous, 2019a) said that:

“Pertama yang harus dilakukan adalah membenahi dulu destinasi wisata atau produknya, kemudian diangkat dengan story telling. Misalnya dari segi kesehatan dan kebersihan, sanitasi kita masih kurang, toilet di tempat-tempat wisata banyak yang tidak bersih. masih sangat tidak layak pakai. Infrastruktur untuk mendapatkan informasi pariwisata juga masih sangat kurang. Misalnya di bandara belum ada brosur atau petunjuk wisata. Oleh karena itu perlu dilakukan pembenahan terutama yang berkaitan dengan basic produk pariwisata seperti

akomodasi, atraksi, destinasi, dan event. Hal ini berbeda dengan fokus pemerintah saat ini yang terlalu fokus pada pendekatan storynomics, yaitu pendekatan yang mengutamakan aspek atraksi dan destinasi”.

“The first thing that must be done is to fix the tourist destinations or their products, then they are appointed with storytelling. For example, in terms of health and hygiene, our sanitation is still lacking, many toilets in tourist attractions are not clean. still very unfit for use. The infrastructure for obtaining tourism information is also very lacking. For example, at the airport there are no brochures or tourist instructions. Therefore, improvements need to be made, especially those related to basic tourism products such as accommodation, attractions, destinations, and events. This is different from the current government's focus which is too focused on the storynomics approach, which is an approach that prioritizes aspects of attractions and destinations” [translated by author].

Then, if we take a look closer to the data (BPS, 2022):

| Region | Number of Foreigners | | | | | |
|-----------------------|----------------------|-----------|-----------|-----------|-----------|-----------|
| | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
| Asean | 3.635.610 | 3.794.441 | 3.817.503 | 4.524.646 | 5.453.330 | 6.157.190 |
| Asia other than Asean | 2.609.473 | 2.934.994 | 3.519.145 | 5.120.495 | 5.847.321 | 5.244.922 |
| the middle East | 216.313 | 237.561 | 292.400 | 284.369 | 267.023 | 263.923 |
| Europe | 1.337.552 | 1.439.464 | 1.767.145 | 1.974.215 | 2.010.911 | 2.075.864 |
| America | 361.220 | 401.934 | 475.979 | 537.031 | 568.398 | 648.903 |
| Oceania | 1.229.967 | 1.366.966 | 1.571.925 | 1.507.934 | 1.574.556 | 1.617.233 |
| Africa | 45.276 | 55.445 | 75.178 | 91.199 | 88.766 | 98.919 |

From the regionalization data, it can be seen that since the free visa policy (without regard to reciprocal principles) was issued, it can be seen that there has been a consistent increase in the number of foreign tourists coming from the Asean region from 2014-2019. The highest increase

was in 2017 and 2018. In 2017 there was an increase of 707,143 people or around 18% compared to the previous year. Meanwhile, the highest increase occurred in 2018, which was 928,684 people or about 20% compared to the previous year. Meanwhile, the Asia other than Asia region experienced the highest increase in 2017 as many as 1,604,350 people or about 45% from the previous year, but in 2019 it decreased by 602,399 people or about 10% from the previous year. Meanwhile, the Middle East region experienced an increase in 2015 as many as 21,248 people or around 9% compared to the previous year, then in 2016 it experienced the highest increase of 54,839 people or 23%. Then it decreased from 2017 to 2019 where the highest decline was in 2018 as many as 17,346 people or about 6% from the previous year.

For the European group, there has always been an increase from year to year, the highest was in 2016 as many as 327,681 people or about 22% from the previous year. Likewise with the American group, which increases every year and the biggest is in 2019 as many as 80,505 people or about 14%. The Oceania group also experienced an increase from year to year and the highest was in 2016 as many as 204,959 people or about 14% from the previous year. Then the African group also experienced an increase from 2014 to 2019, except in 2018 which decreased by 2,433 people or about 2% from the previous year.

From these data, it can be seen that the largest contributor to the number of foreign tourists for Indonesia is from countries originating from the Asean region. In 2019, out of a total of 16 million foreign tourists who came to Indonesia, more than 6 million came from Asean countries, this means that the main markets for the Indonesian tourism industry sector are countries from Asean. Countries originating from Asean before being granted a free visa policy during 2015-2019, have been granted free visa facilities from 1967 until now. When viewed from the impact on the increase in the number of foreign tourists, it has a significant impact so that they deserve to get this free

visa facility. However, keep in mind that the number of countries in Asean that received free visa facilities was 9 countries and contributed more than 37% of the number of tourists entering Indonesia in 2019. In total there were 169 countries that received free visa facilities and more than a third of the contribution of foreign tourists. come from 9 countries. This raises the question whether 160 other countries are eligible to get this facility? The author believes that this policy is detrimental to Indonesia because the large number of countries that are granted free visa facilities are not commensurate with the contributions they make.

On the other hand, since the free visa program was established, the visa on arrival (VOA) program has experienced a very significant decrease in purchases. If a tourist wants to enter the territory of Indonesia, they can enter through 3 channels, namely one through applying for a visa at the Indonesian embassy, the second through the purchase of a visa on arrival and the third through the free visa facility. Due to time constraints and limited data regarding the first method, namely applying for a visa at the embassy, the author will use data from VOA as a comparison. Author took this data from the Directorate General of Immigration and from the Bandung Immigration Office which Author got when Author was an immigration officer there during the 2016-2019 period.

VOA is a form of convenience provided to foreign tourists to enter Indonesia by purchasing a visa upon arrival at Indonesian airports which is valid for 30 days and can be extended for another 30 days. This is different from the free visa program which is only valid for 30 days and cannot be extended. The number of the revenue was higher prior to the implementation of the visa exemption policy because most of the foreigners without prior visa application had to purchase a visa on arrival at the airport. In practice, since the implementation of the policy in the period of June 2015 to December 2016, the state revenue had increased to Rp. 36.511.458.625 in the first month. Yet,

it started to decline fluctuate which led to reaching Rp. 168.219.395.012 of total decrease as it can be seen in the table below.

| Month | Non-tax state revenue of VOA in 2015 | Non-tax state revenue of VOA in 2016 | Decline |
|------------------|---|---|---------------------------------------|
| June | 118,798,628,835 | 155,310,087,460 | 36,511,458,625 (increased) |
| July | 149,963,068,475 | 101,115,277,700 | (48,847,790,775) |
| August | 236,284,081,708 | 106,610,766,965 | (129,673,314,743) |
| September | 196,147,765,450 | 121,425,263,375 | (74,722,502,075) |
| October | 187,085,332,820 | 80,087,948,250 | (106,997,384,570) |
| November | 148,755,971,614 | 60,774,345,372 | (87,981,626,242) |
| December | 181,849,225,595 | 71,801,347,335 | (110,047,878,260) |
| TOTAL | 1,767,271,896,354 | 1,599,052,501,342 | (168,219,395,012) |

Source: Directorate of Immigration Information and Technology System

Another example of the inefficiency aspect of the visa exemption policy can also be seen in Bandung immigration checkpoint (Kantor Imigrasi Bandung 2019). The number of the revenue in the period of January 2015 to December 2019 decreased significantly in the first three years and it started to climb slightly in the next year. However, it began to decline again in the last year of the period. The number of declines in income for the five years since 2015 can be seen in the table below. The decrease serves as evidence that the policy can be considered ineffective and inefficient.

**Non-tax state revenue of VOA
In Bandung Immigration Office, West Java**

| Year | Non-tax state revenue of VOA |
|------|------------------------------|
| 2015 | Rp. 4,860,750,975 |
| 2016 | Rp. 2,404,369,345 |
| 2017 | Rp. 1,589,374,685 |
| 2018 | Rp. 1,648,726,310 |
| 2019 | Rp. 1,421,018,435 |

In addition to the economic impact, the free visa policy also has an impact on other aspects such as aspects of state security. The implementation of the policy can bring a negative impact to national sovereignty such as visa abuse, overstay or other crimes. For example, in Medan in 2019, 286 Bangladeshis are victims of human trafficking (anonymous, 2019b). They are collected in one building before being dispatched to Malaysia through unofficial channels which will later become illegal workers in Malaysia. Their presence in Medan disturbed local residents, potentially disturbing the order and security of local residents, so residents reported their presence to the police, then the police and immigration coordinated to check their visas, which turned out to be using free visa facilities and eventually they were all deported from Indonesia. Apart from this case, there are also other cases related to the impact of this free visa policy, such as the case of foreign tourists who are Russian citizens who become buskers in Indonesia because they do not have the cost of living anymore while in Indonesia then they carry out activities that are not allowed for citizens of Indonesia. free visa foreign holders, namely being street buskers (Annymous, 2020c).

Another example is cybercrime acts carried out by various foreign nationals carried out in Indonesia as a place of operation using free visa facilities. Data from the Directorate General of Immigration (2020) shows that there are 1000 cybercrimes perpetrators who have been arrested in Indonesia from 2016-2019. In 2019, Soekarno-Hatta Airport, which is the largest airport in Indonesia, has refused entry to 1,802 foreign citizens using free visa facilities (Kantor Imigrasi Soekarno-Hatta, 2019) on the grounds that the person concerned does not have a return ticket to his country or to another country, do not have a clear purpose while in Indonesia or do not have a clear place of residence while in Indonesia. These immigration violations have led to an increase in deportation actions by immigration officials. Based on data from the Directorate General of Immigration (2020) shows that the number of acts of deportation has increased from 972 acts in 2018 to 1,590 acts the following year.

Immigration violations caused by users of free visa facilities make the workload of the Directorate General of Immigration increase. The Directorate General of Immigration currently has 125 immigration offices. The number of immigration staff currently employed is 9,977 located throughout Indonesia and abroad. This certainly burdens the duties and functions of immigration officers because in addition to supervising foreigners holding free visa facilities, immigration officers must also provide passport services for Indonesian citizens and residence permit services for foreigners holding limited or permanent residence permits. This area can be used as further research that will focus on the role of immigration officials on the negative impact of free visa policy.

Chapter V

Conclusion and Recommendation

1. Conclusion

In this chapter, the author briefly outlines the findings and analysis of the free visa policy. The summary recommends a solution for what to do next with the policy.

The visa exemption policy as regulated in the presidential regulation number 21 of 2016 is evidence of ineffective and inefficient regulation. This is evidenced by this research where although the free visa policy was expected to be a beneficial breakthrough to improve the national economy sector, the evidence uncovered in this research has found that the policy did not successfully meet the expectation numbers of foreign nationals' visits and non-tax state revenue of visa on arrival in practice. In other words, instead of meeting the expectation of improving the number of foreigners' visits and the national foreign income, the policy resulted in a decrease of non-tax state revenue of visa on arrival. Further, the free visa policy contradicts the Indonesian immigration law number 6 of 2011. In this sense, the reciprocity aspect, as well as security and utility principles as stipulated in the law are ignored in the implementation of the policy. As a consequence, this research argues that the drawbacks of the policy outweigh the positive impacts. Therefore, the recommendation is that the government should evaluate the policy to confirm the veracity of these findings, and if confirmed, consider making changes so that the principle of reciprocity can be accommodated in the free visa policy, the fulfillment of security aspects and state income from other sectors does not decrease significantly like state income from the VOA sector.

2. Recommendation

There are several ways to evaluate policies, namely executive review, legislative review and judicial review. In the context of the free visa policy, legislative review cannot be used as an option to evaluate the policy because the free visa policy is not a product issued by legislative bodies such as the House of Representatives or the Regional House of Representatives. Therefore, the author considers that there are only 2 relevant ways to evaluate the Indonesian free visa policy, namely executive review and judicial review.

According to Lotulung (2000, p. xix) Executive review is all policies made by the executive are tested by institutional and hierarchical authorities. In this context, the term "internal control" is introduced by the parties themselves to the policies issued. The object of "executive review" is a regulation or policy that is regular in nature through a process of revocation or cancellation. This test called "executive review" is carried out to keep the regulations created by the government (executive) in sync or in the same direction, and also consistent and there is legal certainty for justice for the community (Arifin, 2009, p.63). The implementation of this executive review has been regulated in Article 145 paragraph (2) of Law Number 32 of 2004 concerning Regional Government. The process of executive review of Regional Regulations is carried out in the form of supervision by the central government through the Ministry of Home Affairs.

Therefore, the author believes that the free visa policy should be evaluated internally first as an internal control. The president who has issued this policy can summon stakeholders (the ministry of tourism and the ministry of law and human rights Cq Directorate General of Immigration) to analyze the effectiveness and impact of this policy after approximately 4 years of implementation. This is increasingly important to do considering that the current covid-19 pandemic has been handled well by countries in the world and the possibility of the end of this pandemic in the near

future which will make the mobility of people in the world return to what it was before the pandemic.

This mechanism is an evaluation stage contained in the policy cycle concept. Every policy made by the government should be evaluated periodically so that a policy can be made that is in accordance with the values adopted by the Indonesian people and has a positive impact such as providing economic benefits and reducing losses for the Indonesian people such as the occurrence of immigration violations committed by the Indonesian people. can have an impact on public safety and order.

On the other hand, judicial review is an effort by judicial institutions to test legal products set by the legislative, executive, or judicial branches of state power in the context of applying the principle of checks and balances based on the separation of power system. Countries that adhere to a civil law system such as France and Germany (Asshiddiqie, 1999, p.1).

The concept of the rule of law adopted by Indonesia is much influenced by the understanding of continental Europe. The term *rechtsstaat* which is translated as a legal state according to Philip M. Hadjon has become popular in Europe since the 19th century. The ideal of a legal state was first put forward by Plato and this thought was confirmed by Aristotle (Irianto, 2008, p.31). When it comes to Indonesian law, it cannot be separated from the 1945 Constitution and the judiciary, which has the position of upholding law and justice. Such as the Constitutional Court and the Supreme Court as judicial institutions that play an important role in the state administration system. All binding regulations are arranged hierarchically to determine their respective degrees with the consequence that if there are two conflicting regulations, the one with a higher degree is declared valid. Legal studies almost always relate this hierarchical arrangement problem to the theory of *strata* developed by Hans Kelsen and Nawiasky (Mahfud MD, 2009, p.257). Since the free visa

policy is made in the form of a presidential regulation, the review will be carried out by the Supreme Court. The examination of statutory regulations under the law against the law (here in after referred to as the examination of regulations under the law) carried out by the Supreme Court is a form of examination whose object is all regulations that are regulating, abstract and binding in general whose degree is under the law. law. The object being tested is all regulations under the law and used as a benchmark for testing is the law, namely the immigration law.

In Indonesia, the Supreme Court has the right to judicial review to assess the content of a statutory regulation under the Act against a higher statutory regulation. The scope of duties and authorities of the Supreme Court is as regulated in Article 24A paragraph (1) of the 1945 Constitution which reads:

“Mahkamah Agung berwenang mengadili pada tingkat kasasi, menguji peraturan perundang-undangan di bawah undang-undang, dan mempunyai wewenang lainnya yang diberikan oleh undang-undang.”

"The Supreme Court has the authority to adjudicate at the level of cassation, examine statutory regulations under the law, and has other powers granted by law." [translated by author].

The author will convey how the procedure for submitting the material test. The first thing that must be known is regarding the criteria for the material test applicant. Those who can submit it are individual Indonesian citizens, customary law community units as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law, or public legal entities or private legal entities. Then there are the losses caused by the free visa policy. Meanwhile, the respondent is the State Administration Agency or Official that issues the legislation in question, in this context the

President of the Republic of Indonesia. The reason for the judicial review is that the free visa policy is contrary to Article 43 of the immigration law and the process of making laws and regulations does not meet the applicable provisions, namely the lack of public participation. Then the application for Material Test Rights is submitted by making a written application, made in duplicate as needed, which clearly states the arguments/reasons for the objection and must be signed by the Applicant or his legal proxy. Then, the Petitioner pays the application fee at the time of registering the objection request. Then the Chairperson of the Supreme Court's State Administrative Chamber (MA) on behalf of the Chief Justice of the Supreme Court, stipulates the Supreme Court of Justice to examine and decide on the appeal. The Supreme Court Judges who have been appointed then examine and decide on the HUM objection application by applying the legal provisions that apply to the application case in the shortest possible time, in accordance with the principles of a simple, fast and low-cost trial. This is a brief description of the procedure for applying for a judicial review of the free visa policy.

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