

Understanding The Concept Of Nationalism : Using Comparative Law For A Better Indonesian Immigration System In Handling The Illegal Immigrant

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Abstract

Illegal immigrant has become a major problem in many countries. On closer look, It is actually ties to the concept of nationalism. Indonesia even though still lacking in gross domestic product but because of its potential natural resources the risk of illegal immigrant In Indonesia may as well be calculated. The main problem is why Indonesia become the Target of Illegal Immigration and How to deal with the illegal immigration phenomena analyzed using the paradigm of constructivism with the method of qualitative research and Grounded theory study approach, which is based on primary data in the form using comparative law and secondary data of relevant literature and tertiary data of bibliography processed using data triangulation for a better results. The result showed that the concept of nationalism is a necessity in need to be understandable deeply as it is actually acts as a natural defense against illegal immigrant because nationalism itself are usually limited to one ethnic, cultural, religious, or identity group, or that multinationality in a single state should necessarily comprise the right to express and exercise national identity even by minorities. The factor that drives the people to do immigration is internal and external factor. The internal factor such as the nation's wealthy land and resources is the factor that drives them to com to the country and the external factor or push factor are the factor that drives the immigrant out from their

countries such as seen in the rohingya ethnic cases and the suggestion that can be given is that to get a better immigration law in handling the illegal immigrant Indonesia must either ratify the 1951 International Convention and the 1967 Protocol on the Status of Refugees, or presidential decree for the law No. 37 of 1999 on Foreign Relations so that the government can immediately identify whether or not one is a illegal immigrant or a refugees or asylum seeker.

Keywords : Nationalism, Comparative Law, Immigrant, Indonesia

A. INTRODUCTION

Most countries in the world takes pride on its People Nationalism, that is a complex, multidimensional concept involving a shared communal identification with one's nation oriented towards gaining and maintaining self-governance, or full sovereignty, over a territory of historical significance to the group(Anna, 1998). Nationalism is Important however it should not be biased with Fascism, that is a form of political behavior marked by obsessive preoccupation with community decline, humiliation, or victimhood and by compensatory cults of unity, energy, and purity, in which a mass-based party of committed nationalist militants, working in uneasy but effective collaboration with traditional elites, abandons democratic liberties and pursues with redemptive violence and without ethical or legal restraints goals of internal cleansing and external expansion(Robert, 2004)that gave birth to many tragedy such as Holocaust.

Indonesia, as a country with distinct religion and races have been through many chain of conflicts lead by race differences. Conflict like sampit war and the most prominent, the persecution of tionghoa races in Indonesia. The tionghoa races are chinese-descend in Indonesia Believed to first arrived in Indonesia since 3 BC and settled around 7 AC.(Abdulah, 2001) Through the many years since their settlement in Indonesia They have been an object of persecution as seen in many tragedies like the May 1998 Riot or 1740's Riot of Kali Angke where more than ten thousand Tionghoans died.

In light of the recent events happened in Indonesia where many believe that in the recent years, illegal immigrant especially from china come to Indonesia, though valid evidence in the International mIgrant Report 2015 showed otherwise, it may be worth to be an object of interest. Because of the globalization and the advance of technology that makes the world seem to be borderless, In the now globalized world China as a country with almost 9.24 trillion USD of gross domestic product as in 2013 as seen in

the world bank report 2013, wouldn't that make almost impossible for its people to view Indonesia as worthy enough country to do an illegal immigration? This phenomenon may lead to, what is believed to be real, an overflow of work labour from foreign countries or, nothing but the fear from Indigenous people of Indonesia.

Even though Indonesia is still lacking in gross domestic product but because of its potential natural resources the risk of illegal immigrant in Indonesia may as well be calculated.

B. UNDERSTANDING THE NATURE OF NATIONALISM

Perhaps the first and the foremost question that should be answered in order to find how can Indonesia clean from illegal immigrant is why Indonesia become the target for illegal immigration. But before answering that the author would like to explain as to why the author mention about the persecution of Tionghoans in Indonesia.

Naturally, immigrants are usually secluded and feel uncomfortable in the alien land. This happened as there are various definitions for what constitutes a nation, which leads to several different strands of nationalism. Among them some believe that citizenship in a state should be limited to one ethnic, cultural, religious, or identity group, or that multinationality in a single state should necessarily comprise the right to express and exercise national identity even by minorities. (Will, 1995)

The same thing also happened during the Tionghoans first immigration to Indonesia on 7 AC. This phenomenon even though a bit nefarious but at the same time act as a natural defense to protect People's Nationalism on one's country as the most strong bond that ties one's nationalism are not only limited to the group's strong historical significance to the Land but also limiting the group's strong historical significance to one ethnic, cultural, religious, or identity group as seen in some Islamic Country like UAE (Batty, 2013) for example.

For histories people of certain ethnic inhabiting the land claimed that the land belong to themselves thus creating a countries and creating a imaginary border we call national border today. Newcomer who come later then are being unable to enter because of citizenship system where only the people or its descendants who inhabit the place before can savor and only those deemed worthy enough to the country can become the citizen of the country as new people entering the countries means more competition and more idealism and culture and more dangerously, illegal drugs incoming that poses as a threat to its previous inhabitant's necessities fulfillment and

culture. This basically bring forth one major philosophic question from the author, is that the nature of nationalism ?

The question has its own reason as to why it is called Philosophical Question as it means that the question's answers are in principle open to informed, rational, and honest disagreement, ultimate but not absolute, closed under further questioning, possibly constrained by empirical and logico-mathematical resources, but requiring noetic resources to be answered.

The author itself believe even though that may be the nature of nationalism but at the same time it too cannot escape the nature of a human that is *Zoon Politicon*, A Popular Aristotlean term where he believed that human being has the tendency to come together with other human beings to form a community (a polis). Only through this polis a human being can fully flourish. It should be noted that this does not mean that a human being cannot survive on its own (Aristotle realizes the human capability of a solitary life). What Aristotle means is that a human being can only fulfil its full potential when he lives in a polis.

From the line above it can be concluded that aristotle divide the nature of human into individual and communal as even though human have different mindset, attitude, physique they still have to fulfill basic necessities like food, clothing, and shelter and it can never be done alone. Humans As Individual being needs to prove its existence because they are different whether in attitude, personality that makes the existence of human as communal being makes even the highest community that is nation have distinct ethnic, or religion as it is a form of how human needs to be both individual being and communal being.

In the modern life, the necessities have evolved where the communities stated above has become really complex. The community mentioned are not only limited to a country but many countries. Imagine countries as separate individual and the world is a village and one have to help one another, that is the concept of a communal nationalism.

The recent events that prove the existence of this communal nationalism can be seen in how the countries handling the rohingya ethnic, or handling the refugee in general therefore it can be proven that nationalism isnt more likely to be dominated only by irrational negative impulses of monopolizing certain land with humanity set aside. And this values, should be set as the cultural standard in this globalized world (Martinkovicova, 2011).

After understanding the concept of Nationalism then the next object to discuss is what makes Indonesia a target for illegal immigration. To better Understands that the author divide the factor as to why Indonesia become the hotspot to illegal immigrant in to internal factor and external factor

The Internal Factor

The Internal factor, that is the cause as to why Indonesia may or have become the hotspot for illegal immigrant from the inside of the countries itself. In most cases, People migrate for many different reasons. These reasons can be classified as economic, social, political or environmental. The Internal Factor that is, a factor that makes the immigrant want to come to Indonesia or Pull Factor. This factor, based on BBC's migration trends can be divided into :

1. Higher Employment
2. More Wealth
3. Better Services
4. Good Climate
5. Safer, Less Crime
6. Political Stability
7. More Fertile Land
8. Lower Risk From Natural Hazards

Now, based on the mentioned factor the author will analyze one by one. First based on the data as of may 2014 recorded that the refugees and asylum seeker who come to Indonesia, there is a total of 10 623 immigrants, 3,405 of whom are refugees, while the rest of 7218 immigrants are asylum seekers. 1,226 immigrants (36 percent) were from Afghanistan, and 3,176 asylum seekers immigrants (44 percent). Then refugees from Myanmar, 783 immigrants (23 percent), and asylum-seekers from Iran, 1,010 people. Where In 2016 , 27.204 labour from PRC's come to Indonesia that makes the total sum of immigrant from PRC's who got non-permanent residence permit to 31.030 people. and up until today, 1.837 people from PRC's have been illegally stayed in Indonesia whether by crossing the border illegally or overstayed visa though the cases isnt as significant as it seem as the total of Indonesian citizen is 260,581,100 in 2016 as stated in worldometer survey.

As it can be seen in the data mentioned above, now on to the list. The first one, the higher employment rate. This may be not the reason as the indonesian rate of unemployment is 6.2 per cent of the total work force. This phenomena happened may be because the the lack of human resources as based on the PISA (Program for International Student Assessment) on 2015 placed Indonesia's Education level of its people 69 from 76 nation and this data prove to be a real threat as because of its low

education level makes Indonesian workforce competitiveness low and prone to lose in competition to other nation's people furthermore in the more globalized country where technology has become so advanced will swallow people who left behind (Abe, 2015).

The second one, more wealth. Perhaps if wealth is classified not only by the nation's GDP but also its natural resources then Indonesia would win as Indonesia can produce more than 911.000 barrel of oil in 2016 not to mention the gold mine in tembaga pura, timika.

The second factor and in relation to fourth, good climate and seventh, more fertile land perhaps the most charm that attracted many immigrant to come to Indonesia combined then with Safer, Less Crime, the Political Stability, Lower Risk From Natural Hazards and better services makes Indonesia a hotspot for foreigner to immigrate not to mention in accordance to the illegal immigrant then, the most important factor that determines why Indonesia has or may become a haven for illegal immigrant is its security on its national border that will be further explained in the current Indonesia Immigration system.

The External Factor

The External factor, that is the cause as to why Indonesia may or have become the hotspot for illegal immigrant from the outside of the countries itself that sometimes had no connection to Indonesia itself or can also be called the Push Factor that is the factor that drives the immigrant out from their country. The factor is such as :

1. lack of services
2. lack of safety
3. high crime
4. crop failure
5. drought
6. flooding
7. poverty
8. war

Those factor affect the country international competitiveness (Blecker, 1998) For example, how the persecution of rohingya ethnic drove them out from their homeland and as a refugee forced to live in an alien land. In the case of illegal immigrant like from PRC's for example. Where the air, soil and water pollution have gone so bad as a side effect of industrialization that makes living hard may become factor that drives the people to do an illegal Immigration.

The Current Indonesian Immigration System

The current Indonesian Immigration system in handling the illegal immigrant are basically divided in to the prevention system and the rehabilitation system.

The prevention sytem, that is the mechanism that prevent the incoming illegal immigrant whether it is an illegal immigrant that comes from crossing the border and illegal immigrant that is immigrant that ran out of visas while in Indonesia. Based on Law No.6 year 2011 article 13 states that the people whom will be banned to enter the countries is :

1. On The Listed Nation's Deterrence;
2. Does Not Have A Valid Travel Documents;
3. Has A False Immigration Documents;
4. Does Not Have A Visa, Except Those Exempted From The Obligation To Have Visa;
5. Has Given False Information In Obtaining Visa;
6. Suffering From Infectious Diseases That Endanger Public Health;
7. Committing International Crimes And Criminal Offenses That Transnational Organized;
8. Included In The Search List To Be Captured From A Foreign Country;
9. involved in the plot againstThe Government of the Republic of Indonesia; or
10. included in the network of practices or activities involving in prostitution, trafficking in persons, and human smuggling.

In order to enforce the rule then the government uses the rehabilitation systemthat consist of the border control that consists of land patrol and coast control on the nations checkpoint and assign officer not only the immigration officer but also the excise officer to patrol on location prone to illegal crossing as the crossing doesnt mean only human crosses but also things (illegal smuggling).

For the people who are captured as an illegal immigrant, there are various action implemented on them as seen in Law No.6 Year 2011 stated below :

1. immigrant without proper documents, ran out or visas, or waiting for deportation or in need of special treatment (sick or pregnant) will be held in a detention house for maximum of 10 years
2. criminals, will be deported as soon as possible to be judged by the authorized countries and the victim of human traficking will get special privilege such as easier travel permit.

The immigration system explained above may seem to be good but because Law No. 6 of 2011 on immigration, that states that the illegal Immigrant can be held for a maximum period of 10 years in immigration detention. Means a lack of resolute action against the illegal Labor, and it is harmful that if this condition persists can

result in losses to the state Income for care of illegal immigrants care who were detained or soon-to-be deported. And regarding to the refugees, which is not even mentioned in the law or the victim of human trafficking may seem to be hard to implement as the cause is that the refugees are most likely influenced by the push factor like what happened with the rohingya ethnic so that means that deporting the refugees back to their home country will be the same as sending them to die and the same happened to the victim of the human trafficking as some of the victim even sold out by their families or didn't have a place to return to.

Adapting The Immigration System Through Various Nation's System

after explaining the system of handling the illegal immigration in Indonesia and its weaknesses then the next is how to make a better law of immigration law in Indonesia / in order to answer that the author would like to use the comparative law using various nation's immigration law.

The first one is the United States, as a wealthy state with over than 16.77 trillion USD as of 2013 being pioneer in economy (Bowles, 1998), the United States have major problem that also need to be solved and that is regarding the illegal immigrant that majorly came from Mexico. Almost 46,627,102 people came to United States as an immigrant, not including the illegal one based on the USDHS and that is almost 14 per cent of the total United States population.

One question surfaced, if the amount of the immigrant that much so how does the United States still stand firm ?

The answer is actually pretty simple as the reason why the illegal immigrant came to the country is to make a better living and to achieve that they need a job. And Illegal immigrants are generally not allowed to receive state or local public benefits, which includes professional licenses. (Bowles, 2012)

This professional licenses are the most required licenses to get a job. Even a job as a bartender need a professional licenses and without it the illegal immigrant whether they want or not must do a hard labour job to continue living (Jennifer, 2016).

This hard labour job that the immigrant do is the very constitutional system that makes United States able to stay firm. Though to this immigrants comes many threats as ideology and drug and weapon smuggling are prone to happen.

The second country as a comparison, is the People's Republic of China (PRC's) . Illegal immigration in China is a major problem, particularly with North Korean refugees and defectors fleeing their country as their borders are close. The Chinese government actively discourages this type of behavior out of fears that it may cause instability in the region and encourage more illegal immigration. The government has been criticized for its aggressive approach to illegal immigration.

China even build a security barrier along its border with North Korea to prevent the defectors or refugees from North Korea. This case and Also, added with many immigrants from Mongolia have tried to make it to China. There might be as many as 100,000 Africans and Arabs in Guangzhou, mostly illegal overstayers. The differences to Indonesian system is that To encourage people to report foreigners living illegally in China, the police are giving a 100 yuan reward to whistleblowers whose information successfully leads to an expulsion.

C. THE BEST MODEL FOR INDONESIAN IMMIGRATION SYSTEM

Based on the comparation law then it can be concluded a following changes that should be implemented to the Indonesia's immigration system on handling the illegal immigrant. The first one being the illegal immigrant that is refugees. Problems arise because the government is not responsive in dealing with refugees or asylum seekers. Because Indonesia has not ratified the 1951 International Convention and the 1967 Protocol on the Status of Refugees, the government could not immediately determine the status of immigrants as asylum seekers or refugees as Determination of the status is done by the UNHCR (the UN High Commission for Refugees), which takes a long time.

This condition is further worsen by the lack of national instruments governing the same subject. Indonesia does have law No. 37 of 1999 on Foreign Relations, which mandates on refugees and asylum seekers. but that provision should have been implemented by the government by issuing a Presidential Decree (Decree). Unfortunately there is already much years passed, the decree does not turn up.

As a result, when there is a group of foreigners who enter the territory of Indonesia they are categorized as illegal immigrants who commit administrative violations of immigration as Act 6 of 2011 on Immigration. Finally, the strangers were grouped together and placed in immigration detention house therefore it should be retified or repaired immediately.

The second one basic on the united states system that gives the professional licenses to jobs excluding the hard-manual labour may as well be calculated but because of the low education in Indonesia where many of the citizen live by doing hard labor then, by applying this would result in a direct competition in the hard manual labour employment therefore it should be ruled out.

The third and the last that is the money award system given to the citizen who act as a whistleblowers whose information successfully leads to an expulsion can also be implemented as it is an effective system that uses the community itself to find the illegal immigrant rather than using the intel officer.

CONCLUSION

Based on the discussion presented above it can be concluded that The concept of nationalism is a necessity in need to be understandable deeply as it is actually acts as a natural defense against illegal immigrant because nationalism itself are usually limited to one ethnic, cultural, religious, or identity group, or that multinationality in a single state should necessarily comprise the right to express and exercise national identity even by minorities. The factor that drives the people to do immigration is internal and external factor. The internal factor such as the nation's wealthy land and resources is the factor that drives them to com to the country and the external factor or push factor are the factor that drives the immigrant out from their countries such as seen in the rohingya ethnic cases.

As seen in the statement above, therefore in order for Indonesia to get a better immigration law in handling the illegal immigrant must either ratify the 1951 International Convention and the 1967 Protocol on the Status of Refugees, or presidential decree for the law No. 37 of 1999 on Foreign Relations so that the government can immediately identify whether or not one is a illegal immigrant or a refugees or asylum seeker.

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