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CRIMMIGRATION IN INDONESIAN IMMIGRATION DETENTION: ADMINISTRATIVE OR CRIMINAL LAW?

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Abstrack

Immigration detention that allows immigration officials to detain foreigners without judicial proceedings creates complex legal problems, as it is categorized as an administrative action, despite having characteristics like criminal law. This creates confusion in legal classification. Using normative legal research methods, this study reveals that the current creating hybrid 'crimmigration' characteristics that blur administrative and criminal law boundaries. While the international community recognizes immigration detention as administrative law, this research argues that there is an excessive overlap between administrative and criminal law in Indonesian immigration law, which creates both substantive and procedural ambiguity. To ensure legal certainty, this research suggests a clear separation of legal classifications until there is strong justification for their intersection. To achieve this, the research proposes that immigration detention be conceptualized solely as a temporary holding facility, aimed at preventing risks to public security based on well-defined indicators, particularly for cases that cannot be addressed through criminal law mechanisms.

Keywords: Administrative Law; Criminal Law; Immigration Detention

Abstrak

Penahanan imigrasi yang memungkinkan pejabat imigrasi menahan orang asing tanpa melalui pengadilan menimbulkan masalah hukum yang rumit karena dikategorikan sebagai tindakan administratif, padahal ia memiliki karakter yang serupa dengan hukum pidana. Hal ini menciptakan kebingungan dalam penggolongan hukum. Dengan menggunakan metode penelitian hukum normatif, penelitian ini berargumen bahwa sistem saat ini menciptakan karakteristik 'krimigrasi', yaitu persinggungan yang mengaburkan batas-batas hukum administratif dan pidana. Meskipun komunitas internasional mengakui penahanan imigrasi sebagai hukum administratif, penelitian ini berargumen bahwa terdapat tumpang tindih berlebihan antara hukum administrasi dan pidana dalam hukum imigrasi Indonesia, yang menimbulkan ketidakjelasan substantif maupun prosedural. Untuk menjamin kepastian hukum, penelitian ini menyarankan untuk memastikan pemisahan penggolongan hukum yang tegas hingga ada justifikasi yang kuat untuk persinggungan tersebut. Untuk mencapai hal tersebut, penelitian ini mengusulkan agar penahanan imigrasi dipahami semata-mata sebagai fasilitas penempatan

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sementara dengan tujuan pencegahan risiko terhadap keamanan masyarakat berdasarkan indikator yang jelas, khususnya untuk kasus-kasus yang tidak dapat ditangani melalui mekanisme hukum pidana.

Kata Kunci: Hukum Administrasi; Hukum Pidana; Penahanan Imigrasi

I. Introduction

History records that human migration has occurred for a long time, with globalization increasing international migration flows, leading to 281 million migrants, or 3.86% of the world's population.[4] Indonesia, being the fourth most populous country in the world, possesses a significant excess of labor for individuals with poor skills and limited education.[5] It ranked as the 11th largest sending country, with 4.5 million individuals, or 1.6 percent of its population, emigrating in 2020[6], predominantly sending low-skilled labor migrants.[7] Over 2 million Indonesians work as international labor migrants in Malaysia, many of them without documentation, as a result of the substantial boat traffic between Indonesia and Malaysia, which has created a large migration economy between the two countries. Because of its strategic geographic location, Indonesia also often considered as a “transit country” for asylum seekers traveling to Australia.[8]

Within this significant influx of migrants, Law No. 6 of 2011 Regarding Immigration (Immigration Law 2011) mandates immigration to regulate the movement of individuals entering and leaving the territory of Indonesia, thereby safeguarding the country's sovereignty. The role of immigration entails the regulation and supervision of the movement of individuals entering or exiting Indonesian territory, with the aim of safeguarding the country's sovereignty. The primary purposes of immigration are to serve the public, enforce laws, ensure national security, and promote community welfare development, all with the goal of preserving national sovereignty. Immigration law governs immigration officials' duties in managing individual entry and exit, and overseeing foreigners' presence and activities in Indonesia. The regulation of the entry

[4] Marie M. and L.A. Oucho. (2024) '*World Migration Report 2024'.* Geneva: International Organization for Migration (IOM), p. xii.
[5] Graeme H., George T., and Caven J.N. 'Indonesia as a Transit Country in Irregular Migration to Australia,' in Marie M. and Khalid K. (ed). (2017) '*A Long Way to Go: Irregular Migration Patterns, Processes, Drivers and Decision-Making'* Australia: ANU Press, p. 172.
[6] Marie M. and L.A. Oucho, *op.cit*, p. 124.
[7] Graeme H., George T., and Caven J.N., *op.cit*.
[8] *Ibid.*

and exit of individuals is considered as an expression of a country's sovereignty. Every person who enters or leaves Indonesia is required to pass immigration examination at specific checkpoints, as determined by the Ministry of Law and Human Rights (now: Ministry of Immigration and Correction). Supervision occurs when entry permissions are either granted or refused, with immigration conducting administrative and field oversight for both Indonesian nationals and international individuals. Supervision takes place when entry permissions are either granted or refused. Immigration carries out administrative and field oversight for both Indonesian nationals and international individuals.[9] This is a challenging task for immigration due to Indonesia's geographic nature as an archipelagic nation.

Unauthorized foreigners who enter Indonesia are subject to immigration measures, which may include being placed in immigration detention centers (*rumah detensi imigrasi*/ IDCs) or detention rooms (*ruang detensi imigrasi*/IDRs). In this regard, it can be seen that the immigration detention appears to use a comparable method of restricting freedom, as acknowledged in criminal procedural law. Detention in criminal procedural law refers to the act of confining individuals to a specific location for a set period of time. This is done when there is sufficient preliminary evidence and a strong suspicion that the individual has committed a criminal act. The purpose of detention is to facilitate the investigation, prosecution, and/or trial process, following the procedures outlined in the article 1(21) of Indonesian Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*/ KUHAP). Specifically, article 21 of the KUHAP stipulates that detention can only be carried out if a person meets objective requirements, namely committing a criminal act that carries a minimum penalty of 5 (five) years and committing a criminal act specifically determined by the KUHAP, as well as subjective requirements, namely if there are concerns that the individual might flee, destroy evidence, or repeat the criminal act based on sufficient grounds. Throughout the entire criminal justice process, the criminal justice system can carry out detention for a maximum of 400 (four hundreds) days, which can be extended for up to 150 (one hundred and fifty) days at all levels of examination if the individual suffers from severe physical or mental disorders and is suspected of committing a criminal act with a minimum penalty of 9 (nine) years. The criminal justice system itself can carry out detention in detention centers, at home, or in the city. A periodic reporting requirement mechanism applies to the suspect or defendant

[9] Jazim H. and Charles C. (2015) 'Hukum Keimigrasian: Bagi Orang Asing Di Indonesia' Jakarta: Sinar Grafika, p. 87-88.

in city detention.[10] In cases of unlawful detention in the criminal justice system, legislation has also rigorously governed the procedure and ensured the right to reparation and rehabilitation, as detention without legitimate legal justifications is fundamentally unacceptable.

Immigration detention, on the other hand, differs from criminal procedure law. Immigration detention 'places' individuals in a form of administrative action rather than ensuring the criminal justice. Immigration officials have the authority to detain foreigners under article 83 of the Immigration Law. The administrative nature of immigration detention eliminates the need for a trial, requiring only a written decision from the Minister or an appointed Immigration Officer. The immigration official or minister may hold detainees in IDCs for a period not exceeding ten years, or until their deportation. If the detainee exceeds the 10-year threshold, the immigration detention center may grant their release, subject to periodic reporting requirements. Using the logic of criminal procedural law, we can compare the immigration detention process in IDCs to a maximum 10-year detention center stay in the criminal justice system. Furthermore, if the reporting obligation mechanism in IDCs is similar to that in criminal procedural law, there is a possibility that they may face indefinite city detention after 10 (ten) years.

When comparing the two types of deprivation of liberty under these laws, it gives the impression that the administrative action of immigration detention is more burdensome than the criminal process. A person committing a crime must undergo a trial to receive a sentence, whereas an individual committing an immigration violation can face prolonged deprivation of liberty without a trial. Compared to criminal procedural law, offenders' rights appear to be more protected than those people in immigration detention. However, the process for an administrative violation seems harsher rather than for a criminal conviction.

There has long been debate regarding the legal classification within immigration law and its connection to criminal law at the global level. However, specific studies on the characteristics of Indonesian immigration law remain scarce. In Indonesia, the intersection between criminal and administrative law has thus far been examined primarily in relation to specific offenses, such as corruption. By contrast, discussions on

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[10] Ibnu H. (2020) '*Jadi Tahanan Kota, Bos PS Store Wajib Lapor 2 Kali Seminggu*,' Available from: https://news.detik.com/berita/d-5112389/jadi-tahanan-kota-bos-ps-store-wajib-lapor-2-kali-seminggu. (Accessed June 14, 2024).

immigration detention have predominantly centered on asylum seekers and/or refugees, particularly regarding their identical treatment with other immigration detainees. As an illustration, SUAKA, an organization dedicated to protecting asylum seekers and/or refugees in Indonesia, recorded 42 cases involving 47 refugees and asylum seekers between 2021 and 2024, with issues ranging from detention without a clear legal basis to incidents of refoulement.[11] Other studies also documented poor conditions in detention facilities and highlighted potential human rights violations.[12] While these works provide valuable insights, they tend to be case-specific, and little attention has been given to whether the broader framework of immigration detention can be justified for all categories of detainees. This research aims to fill that gap by examining the position and status of legal classification in Indonesian immigration law, to explore how it may create room for potential human rights violations.

To address this problem, this paper used the normative judicial approach, a legal research method that involves analyzing secondary data[13], specifically examining and harmonizing the extent to which positive law on immigration detention demonstrates coherence in Indonesia from administrative and criminal law perspectives, with assistance from international law frameworks. The research adopts a multi-dimensional analytical framework to assess the consistency and alignment of Indonesia's immigration detention legal framework across these domains.

II. Analysis And Discussion

What is the definition of immigration detention in Indonesia? There is no legislation that provides a definition of immigration detention. The immigration law solely specifies the location where detention takes place. According to article 1 (15) of the 1992 Immigration Law, the place for conducting detention is called an immigration quarantine (*karantina imigrasi*). Immigration quarantine is a temporary shelter for foreigners subjected to expulsion, deportation, or other immigration actions. Furthermore, the Immigration Law revised in 2011 included the expulsion or deportation process as part of administrative measures, changed the name of immigration quarantine to Immigration Detention Centers (IDCs), and added Immigration Detention Rooms (IDRs) as a place

[11] Indonesian Civil Society Association for Refugee Rights Protection (2025) Internal report SUAKA. unpublished.

[12] Anje M. '*Detaining Asylum Seekers and Refugees in Indonesia*,' in Douglas E., Greg L., and Rich F. (ed). (2016) '*Detaining the Immigrant Other: Global and Transnational Issues*'. New York: Oxford University Press, p. 91–104.

[13] Soerjono S. and Sri M. (2021) '*Penelitian Hukum Normatif: Suatu Tinjauan Singkat*.' Depok: Rajawali Pers, p. 13.

to detain. Immigration detention rooms (IDRs) are temporary shelter for foreigners subjected to immigration administrative measures, located at the Directorate General of Immigration and Immigration Offices, meanwhile, immigration detention centers (IDCs) are technical implementation units that perform immigration functions as temporary shelters for foreign nationals subjected to immigration administrative measure (*tindakan administrative keimigrasian*/TAK).

If compared, the difference between these two places is the location where the detention is carried out. IDRs are conducted in a space within the immigration office, while IDCs are separate facilities. Meanwhile, the similarity is that both serve as temporary shelters for foreign nationals subjected to immigration administrative measure (TAK).

To understand the legal framework governing immigration detention, it is essential to examine the concept of immigration administrative measures (TAK). Immigration administrative measure (TAK) itself can be defined as an administrative sanction imposed by immigration officials outside the judicial process, consisting of (1) being included in a prevention or arrest list; (2) having restrictions, modifications, or cancellation of a Residence Permit; (3) being prohibited from being in one or several specific places within the territory of Indonesia; (4) being obligated to reside in a specific place within the territory of Indonesia (mandatory residence requirement); (5) incurring costs; and/or (6) being deported from the territory of Indonesia. These immigration administrative measure (TAK) can be imposed on foreigners in Indonesia if they do three things: (1) engage in activities that are dangerous and reasonably suspected of endangering public security and order; (2) fail to respect or comply with laws and regulations; and (3) because they are trying to avoid threats and the execution of sanction in their home country.

Having established what constitutes immigration administrative measure (TAK), it is necessary to examine the broader theoretical framework of administrative sanctions to understand where immigration detention fits within Indonesia's legal system. Since the essence of immigration administrative measures (TAK) constitutes administrative sanctions, their consequential application serves as sanction for administrative violations. Administrative sanctions are broadly understood as penalties imposed by regulatory authorities without intervention from courts. [14] The purpose of implementing

[14] Ghufran S. W., Hendrik S., and Julista M. (2021). 'Kajian Terhadap Pengaturan Sanksi Denda Administratif Dalam Peraturan Daerah Tentang Pembatasan Sosial Berskala Besar,' TATOHI: Jurnal Ilmu Hukum 1 (9):961-970, p.966.

administrative sanctions against occurring violations is intended as an effort by administrative bodies to maintain administrative law norms that have been established within statutory regulations. Building upon this foundational purpose, Philipus M. Hadjon categorizes administrative sanctions into four distinct types: (1) governmental coercion (*bestuursdwang*); (2) regression or withdrawal of beneficial decisions including permits, subsidies, payments, and others; (3) imposition of administrative penalties by government (*dwangsom*); and (4) imposition of administrative fines (*administratieve boete*).[15] Additionally, administrative sanctions can be classified based on their targets into three types: (1) reparatory sanctions, meaning sanctions applied as reactions to norm violations aimed at restoring conditions to their original state before violations occurred, such as *bestuursdwang* and *dwangsom*; (2) punitive sanctions, meaning sanctions intended to punish individuals, such as administrative fines; and (3) regressive sanctions, which are sanctions applied as reactions to non-compliance with provisions contained in issued regulations.[16] This categorization becomes particularly relevant for immigration detention, which appears to function as a punitive sanction through governmental coercion, yet operates within administrative rather than criminal procedures.

According to Teguh Apriyanto and Retno Saraswati, the administrative sanctions in immigration administrative measures (TAK) include punitive measures such as inclusion in prevention lists and deportation, which directly punish foreign nationals who violate immigration rules through governmental coercion (*bestuursdwang*). Additionally, regressive sanctions manifest through restrictions or cancellations of residence permits for those who fail to comply with their legal obligations, while preventive sanctions involve geographic restrictions that proactively maintain regional security by limiting access to specific areas. Furthermore, mandatory residence requirements create a dual-purpose mechanism that simultaneously punishes violators and prevents future violations, effectively functioning as punitive sanctions. Finally, the system incorporates financial administrative penalties through *dwangsom.*[17]

Based on this analysis, immigration detention falls within the category of mandatory residence requirements, thereby functioning as a punitive sanction that

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[15] Philipus M. H., (1994). 'Pengantar Hukum Administrasi Indonesia'. Yogyakarta: Gadjah Mada University Press, p. 246.
[16] Ghufran S. W., Hendrik S., and Julista M., *loc.cit*, p. 965.
[17] Teguh A. and Retno S. (2023). 'Kajian Sanksi Administratif Terhadap Pelanggaran Peraturan Keimigrasian (Suatu Tinjauan Komparasi Hukum Administrasi Negara)'. Jurnal Hukum Progresif, 11 (2):108-121, p. 114-115.

operates through both repressive and preventive mechanisms. Although administrative sanctions can also be punitive in nature, the problematic aspect of this immigration sanction lies in its nature as a freedom-restricting measure, which fundamentally represents a form of sanction traditionally recognized and applied exclusively within criminal law frameworks rather than administrative law contexts.

To fully understand the problematic nature of immigration detention's punitive characteristics within administrative law, it is necessary to examine how criminal law approaches sanctions and the restriction of personal freedom. Criminal law operates through sanction systems that address criminal behavior through distinct theoretical frameworks designed to achieve justice and social order. These criminal sanction theories can be systematically categorized into three fundamental approaches: (1) absolute theory, which emphasizes retributive elements by focusing on retaliation against criminal acts committed by offenders; (2) relative theory, which prioritizes preventive measures aimed at deterring other community members from committing similar crimes while simultaneously rehabilitating offenders to become better individuals; and (3) combined theory, which integrates both retributive and preventive elements as a unified sanction doctrine that balances justice with social protection goals.[18]

In Law No. 1 of 2023 concerning the Criminal Code (National KUHP) which will take effect in 2026, uses the combined theory since there are two main aspects in sanction objectives, namely societal protection and offender rehabilitation as mentioned in Article 51 stating that sanction aims to prevent criminal acts by: (1) enforcing legal norms for societal protection; (2) reintegrate convicted persons through guidance and supervision; (3) resolve conflicts arising from criminal acts while restoring social balance and peace; and (4) cultivate remorse while relieving guilt in convicted persons.

To achieve the aforementioned objectives, criminal sanctions can be systematically divided into primary and additional sanctions, where the National KUHP lists various primary sanctions in Article 65 including imprisonment, confinement (*tutupan*), supervision, fines, and community service, which all these sanctions arranged according to severity levels (*strafmaat*), with confinement, supervision, and community service functioning as alternatives to imprisonment. Additionally, Article 66 of the National KUHP also mentioned supplementary sanctions such as revocation of certain

[18] A. A. G. Budhi W. P., Simon N., and I N. G. Sugiartha. (2020). 'Pemidanaan terhadap Pelaku Tindak Pidana Korupsi Melalui Double Track System', Jurnal Preferensi Hukum, 1 (2): 196–200, p. 198.

rights, confiscation of goods and claims, announcement of judicial decisions, compensation, permit revocation, and fulfillment of local customary obligations.[19]

Furthermore, the National KUHP introduces sanctions in the form of measures (*tindakan*) as part of a double track system that combines sanction as prevention alongside traditional criminal sanctions focused on retaliation and deterrent effects, where these measures/*tindakan* can be imposed on both responsible and irresponsible perpetrators. For responsible perpetrators, measures can be given together with primary punishments, including driver's license revocation, profit confiscation from criminal acts, restoration of criminal consequences, job training, rehabilitation, and institutional care, which notably possess administrative nuances while maintaining that imprisonment and freedom restriction exist exclusively within primary punishments.[20] This comprehensive approach significantly differs from the previous Criminal Code's single track system, which consisted only of primary punishments including death penalty, imprisonment, detention (*kurungan*), fines, and confinement (*tutupan*), alongside additional punishments such as revocation of certain rights, confiscation of certain goods, and announcement of judicial decisions.

From the above analysis, there appears to be significant intersection between criminal and administrative sanctions, yet fundamental distinctions remain evident in their underlying character and purpose. Unlike traditional criminal law, which tightly controls government power to protect individual rights, administrative law gives agencies more freedom to carry out laws in ways that best fit their goals, focusing on procedures that promote public benefits such as encouraging innovation, improving infrastructure, or providing aid through clear and connected processes that balance agency authority with public needs. In other words, the primary character of criminal law is 'restricting' whereas administrative law is more 'enabling' in nature. Criminal law is typically created by the legislature and designed to punish extreme unacceptable behavior, while administrative rules are created by executive agencies, more flexible in application, and designed to regulate technical matters such as permits, taxes, and product standards.[21] Therefore, while overlapping elements exist between these sanctioning systems, their fundamental orientations toward restriction versus facilitation reflect distinct approaches to

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[19] Michael A. P., Billi J. S., and Rosmalinda. (2024). 'Keberpihakan Pemidanaan Dalam Undang-Undang Nomor 1 Tahun 2023', Locus: Jurnal Konsep Ilmu Hukum*,* 4(2): 64–71, p. 68.

[20] Gita S. R., Barda N. A., and Purwoto (2012). 'Sistem Pidana dan Tindakan 'Double Track System' Dalam Hukum Pidana di Indonesia', Diponegoro Law Journal*,* 1(4).

[21] Ronald A. C. (2014). 'Overcriminalization: Administrative Regulation, Prosecutorial Discretion, and the Rule of Law,' Federalist Society Review*,* 15 (2).

governance and social control, with criminal sanctions primarily emphasizing punishment and deterrence, and administrative sanctions focusing on regulatory compliance and public welfare promotion. However, since the precise boundaries between criminal law and other areas of law have never been clearly defined, the overlapping nature of these two sanctioning systems must be acknowledged, illustrating the increasing complexity of contemporary legal frameworks.[22]

To examine further the overlapping nature between administrative and criminal law, contemporary legal theory presents at least five conceptual paradigms that address the intersection between criminal law and administrative (which in some jurisdictions fall under civil) law systems. Given the complexity of distinguishing between criminal and administrative sanctions, legal scholars have developed various theoretical frameworks to address this intersection. Five main paradigms have emerged to categorize administrative sanctions that exhibit criminal-like characteristics. These five conceptual paradigms of administrative sanctions reflect systematic efforts by legal scholars to categorize and provide normative frameworks for sanctioning instruments that are inherently difficult to classify within traditional criminal-administrative law dichotomies:

1. Administrative sanctions are not 'law' but a different form of state power because they are merely governmental tools for regulating efficiency and therefore do not adhere to formal legal principles.[23]
2. Administrative sanctions are categorized as civil law when referring to administrative sanctions, such as monetary fines, to avoid constitutional complexities that would arise if categorized as criminal law, where offenders would be required to pay fines twice—once under administrative law and again under criminal law.[24] However, it should be remembered that the punitive nature of administrative sanctions can feel as severe as criminal one.[25]
3. Administrative sanctions are classified as 'second class' criminal law. Administrative sanctions are not 'real crimes' or *mala per se* (acts that are evil because of the action itself) but are still part of the criminal law system in the form of *mala prohibita*, where someone is considered to have committed a crime because it is prohibited by criminal laws. In this context, criminal law is applied hierarchically, serving as a repressive measure of last resort.[26] This paradigm considers criminal law as the guardian of other disciplines, including administrative law.[27]

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[22] Deawit S. and Frans S. (2022). 'Dinamika Persinggungan Hukum Administrasi and Hukum Pidana di Indonesia', Jurnal Inovasi Penelitian*,* 3 (2): 5013–28, p. 5022.
[23] Markus D. D. (2005). '*The Police Power: Patriarchy and the Foundations of American Government.'* USA:Columbia University Press, p. 104-117.
[24] Eithan K. (2018). 'Understanding Administrative Sanctioning as Corrective Justice', University of Michigan Journal of Law Reform, 51 (2): 313-355, p.313-316.
[25] Dinoroy M. A. (2021). 'Kompleksitas Penegakan Hukum Administrasi dan Pidana di Indonesia', *Jurnal Legislasi Indonesia* 18 (1):45-58, p. 51.
[26] *Ibid*, p. 56.
[27] Deawit S. and Frans S, *loc.cit,* p. 5016.

4. Administrative sanctions serve as a 'middle ground' between criminal law and civil law because of the difficulty in finding clear boundaries between criminal and administrative law. Administrative sanctions constitute a hybrid system that adopts the purpose of criminal law sanction but uses civil law procedures. Therefore, administrative sanctions are not purely criminal or civil, but rather a combination of both—punitive like criminal law but with simpler processes like civil law.[28]
5. Administrative sanctions, which are based on the corrective justice principle, are intended to address the ex-ante excessive risk to public rights that administrative violations represent by taking preventative action. Administrative sanctions thus restore balance in the mutually beneficial relationship between the public interest and the offender.[29]

This research argues that from the practical perspective in the international community, it falls into a fourth category. International law classifies immigration detention as administrative detention, and therefore it falls within the administrative law domain. The international community defines administrative detention as '*detention is considered administrative detention if, de jure and/or de facto, it has been ordered by the executive and the power of the decision rests solely with the administrative or ministerial authority, even if a remedy a posteriori (after the event) does exist in the courts against such a decision. The courts are responsible only for considering the lawfulness of this decision and/or its proper enforcement and not for taking the decision itself*'.[30] Administrative detention is used by States for various purposes, including: controlling immigration and cross-border movement; containing individuals deemed security threats; ensuring treatment for mental health conditions; addressing drug or alcohol misuse; providing protection to those at risk of abuse and exploitation; addressing criminal offending by minors; and police detention prior to formal charges.[31] When referring to the five paradigms mentioned above, immigration detention in international community falls into the fourth paradigm. This means it is essentially criminal in nature but uses civil procedures. Some scholars refer to this hybrid relationship between administrative and criminal law in the immigration context as 'crimmigration'.[32] While some scholars disagree with the crimmigration framework, arguing that occasional intersections do not justify creating a distinct category, the concept remains valuable for

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[28] Kenneth M. (1992). 'Punitive Civil Sanctions: The Middleground between Criminal and Civil Law,' The Yale Law Journal, 101(8): 1795-1874, p. 1799.
[29] Kidron, *loc.cit*.
[30] Louis J. (1989). 'Report on the Practice of Administrative Detention', United Nations Economic and Social Council, para.*17.*
[31] Carolyn H., Kristen A., Ruth B., and Kamena D. (2011). 'Administrative Detention of Children: A Global Report'. Discussion Paper. New York: United Nations Children"s Fund (UNICEF), Children's Legal Centre, p.3.
[32] Stephanie J. S. and Evelyne M. (2012). 'Why Immigration Detention Is Unique,' Population, Space and Place, 18 (6): 677–686.

understanding how immigration detention operates in practice.[33] Regardless of terminological preferences, the fundamental issue remains: immigration detention involves deprivation of liberty while operating outside traditional criminal procedures.

The word 'crimmigration' was coined by Juliet Stumpf to describe the merging of criminal and immigration law, encompassing the substantive, enforcement, and procedural aspects of both domains.[34] There is a convergence in legal substance as a result of the application of criminal penalties for immigration law violations, the use of criminal grounds to exclude and deport migrants, and the emphasis on the detention and deportation of individuals who are perceived as potential security threats due to their propensity to commit crimes.[35] This integration of criminal and immigration law underscores the transition to treating immigration violations with the same severity as criminal offenses, with an emphasis on prevention and control rather than merely administrative regulation. The enforcement mechanism involves transferring immigration officials from a civil administrative agency to a law enforcement agency. Additionally, the implementation of detention as a punitive measure is the primary procedural similarity between criminal law and immigration law. Both legal domains employ detention as a sanction, equating immigration detention to incarceration in criminal law.[36] This means immigration detention aims to create a deterrent effect and requires more accurate justification to prevent recidivism[37], which differs from administrative law that seeks to encourage administrators to deliver optimal service levels more efficiently.[38]

The theoretical frameworks discussed above become particularly relevant when examining Indonesia's immigration system. Indonesia's approach to immigration administrative measures (TAK) creates a similar hybrid between administrative and criminal law, which can be confusing in practice. In reality, Indonesia's dualistic immigration system offers clear and distinct concepts that effectively separate administrative and criminal violations, which serves as a viable framework for defining the boundaries of administrative detention.[39] Under Indonesian immigration law,

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[33] Graham H. (2018). 'Does Crimmigration Theory Rest on a Mistake?,' International Journal of Migration and Border Studies, 4(4):303-325, p.308-310.
[34] Juliet S. (2006). 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power,' American University Law Review, 56 (2): 367–419,p. 381-385.
[35] *Ibid*, p. 386-390.
[36] *Ibid*, p, 390-395.
[37] Thomas B., Carole M. B., and Sandra R., (2015). 'Comparison of Criminal and Administrative Penalties for Environmental Offenses,' European Journal of Law and Economics, 39 (1): 11–35, p.13.
[38] William B. (1990) 'A Theory of Administrative Law,' Journal of Legal Studies, 19 (2):489-530, p. 496.
[39] Muhammad S. P., Syamsuddin M., and Haeranah. (2023) 'Legal Analysis of Immigration Detention Efforts in Immigration Criminal Enforcement', Journal of Development Research, 7 (1): 110–117, p. 114.

foreigners may encounter two distinct types of violations: immigration criminal offenses under the penal system, and immigration administrative violations.[40] Criminal offenses fall under criminal justice system jurisdiction, while administrative violations are governed by administrative law.

Article 83 of the 2011 Immigration Law specifically regulates immigration detention if an individual meets the following conditions: (a) entering Indonesian territory without a valid stay permit or one that has expired; (b) entering Indonesia without a valid travel document; (c) being subject to immigration administrative action due to a revoked stay permit for actions that threatened public safety, ordered chaos, or broke the law; (d) currently facing deportation; or (e) still waiting to leave Indonesian territory after receiving an entry certificate. Nevertheless, a closer examination reveals problematic legal overlap. Conditions (a) and (b) significantly overlap with criminal provisions under Article 119 of the 2011 Immigration Law, which carries penalties of up to 5 (five) years in prison and a fine of 500 (five hundred) million rupiah. This means individuals violating Article 83(a) and (b) can face both administrative detention under administrative law and criminal detention under criminal procedure law. This creates the possibility of double detention for the same violation.

This double detention problem is further complicated by existing regulations. Article 45 of Minister of Law and Human Rights Regulation No. 39 of 2021 regarding procedure for investigating immigration crimes states that individuals facing criminal penalties below five years should be held in IDCs, while those facing 5 (five) years or more should be placed in regular detention facilities. Since violations under Article 83(a) and (b) carry criminal penalties of five years or more, these are essentially criminal matters that should follow criminal procedure rather than administrative procedure. Therefore, the administrative detention authority for these provisions should be eliminated, allowing these cases to proceed through the proper criminal justice system. Since violations under Article 83(a) and (b) carry criminal penalties of five years or more, these are essentially criminal matters that should follow criminal procedure rather than administrative procedure. Therefore, the administrative detention authority for these provisions should be eliminated, allowing these cases to proceed through the proper criminal justice system.

The detention of individuals in IDCs for immigration criminal offenses with penalties under five years raises questions about justification, as the rationale for such detention

[40] *Ibid.*

lacks clear explanation. Despite these concerns, given this regulatory framework, IDCs should maintain significantly lighter security measures than regular detention facilities. With the removal of these two overlapping provisions in Article 83, immigration detention becomes relevant only as a waiting facility and preventive measure while individuals receive administrative sanctions such as residence permit cancellation, or during the waiting period for deportation or repatriation following entry denial.

In other words, immigration detention should serve to ensure proper deportation/removal procedures. Deportation is classified as an administrative sanction, distinct from criminal penalties which have specific primary penalty categories in Indonesia. The current criminal code does not recognize the double track sentencing system, which contributes to the hybrid nature of immigration detention classification. However, this administrative-criminal distinction remains clear within the dualistic immigration system, supporting detention's function as a waiting period for deportation rather than punishment

Beyond the technical legal issues, the hybrid nature of immigration detention in Indonesia reflects broader socio-political concerns. Crimmigration theorists assert that immigration law largely operates like criminal law[41], and this approach is often misused. The utilization of criminal law and enforcement tactics in the immigration system stems from the apprehension of the host country towards migrants who possess lower socio-economic status, belong to diverse racial and cultural backgrounds, and are often perceived as potential disruptors to the established social structure.[42] According to general explanation of immigration law 1955-2011, Indonesia has long been plagued by concerns regarding illegal migrants, who are accused of entering the country and depriving locals of job possibilities, or creating new social issues, such as begging[43], the probability of committing a violation in Indonesia. Furthermore, there is a potential for societal rejection due to social envy if they receive more assistance than local residents.[44] These anxieties have directly influenced Indonesia's immigration detention policies. This influence is evident in Indonesia's adoption of a selective policy approach,

[41] Graham H., *loc.cit.*, p. 307-308.
[42] Maria J. G., Maartje V. W., and Joanne V. L., (2013). 'Social Control and Justice: Crimmigration in the Age of Fear.' Eleven International Publishing, p, 112.
[43] Jazim H. and Charles C. *op. cit,* p. 92.
[44] Rachmawati (2020). '*Rohingya Di Aceh, Dilema Antara Kemanusiaan Dan Potensi Kecemburuan Sosial*,' Available from: https://regional.kompas.com/read/2020/06/30/11150041/rohingya-di-aceh-dilema-antara-kemanusiaan-and-potensi-kecemburuan-sosial?page=all.(Accessed June 30, 2024).

which began with the enactment of the Emergency Law of 1955 that terminated the open-door policy from the Dutch East Indies era.[45]

The government has tightened foreign entry requirements and classified certain actions as immigration offenses through a selective policy approach.[46] The policy allows foreigners to enter and exit Indonesia based on criteria related to well-being and safety, without providing detailed information on the principles of benefit and security. The lack of detailed criteria in these policies creates opportunities for discrimination against migrants from lower socio-economic backgrounds who need help. This ambiguity is further complicated by the fact that Indonesian immigration law conflates administrative and security functions.

The Indonesian case exemplifies a situation where immigration administrative measures (TAK) may be employed in response to threats, infractions, or dangers. If someone violates Indonesian laws (especially those pertaining to criminal offenses) or participates in risky activities that could endanger public safety and order, immigration administrative measures (TAK) can be implemented.

Although the rules regarding what constitutes endangering public security are not specifically regulated, in training conducted by immigration, it is mentioned that indicators of engaging in dangerous activities and reasonably suspected of endangering public security and order include (1) propagating or sympathizing with ideologies and values that are contrary to Pancasila and the constitution, (2) preventing people from worshipping according to religions recognized by Indonesia, (3) damaging and endangering public decency norms, (4) making jokes that cause mistaken reactions to community customs, (5) presenting a misleading picture of Indonesian social and cultural development, (6) promoting obscene acts through writings, depictions and others, and drunkenness in public places, (7) not having living expenses, engaging in begging alone or together, (8) damaging or disturbing social order and community including in the workplace, (9) causing tension in household or community harmony and stimulating the emergence of crimes, (10) inciting sentiments or provocations that can drive ethnic, religious, racial or group sentiments, (11) facilitating opportunities for gambling and rivalry among peers, or ethnic and group divisions.[47] This extensive list reveals several

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[45] Chaerul M., Muhammad A., and Aksa. (2021). 'Kebijakan Imigrasi Zaman Hindia Belanda (1913-1942)', Rihlah: Jurnal Sejarah and Kebudayaan*,* 9(1): 01–12, p. 3.
[46] M. Alvi S. (2019). 'Politik Hukum Keimigrasian Indonesia: Studi Pendekatan Sejarah dan Kontemporer', Sol Justitia, 2(1):43-69.
[47] Jazim H. and Charles C. *op. cit,* p. 91.

problematic aspects. First, many activities overlap with existing criminal provisions. Second, some criteria are subjectively defined. Third, social conditions like poverty are criminalized. This discretionary authority is particularly problematic when considering the broad criteria used to justify detention.

As discussed earlier, the extensive list of activities that can endanger public security reveals a fundamental problem. Given this broad definition of public security, the problem is clear: many of these actions are already covered by Indonesia's Criminal Code, while others questionably treat social conditions like poverty as crimes. This raises the critical question: what justifies bypassing criminal procedure for matters that are inherently criminal in nature?

If administrative detention is to be justified, it should only be permitted in truly exceptional circumstances where criminal prosecution is demonstrably insufficient. This aligns with the fifth paradigm discussed earlier (administrative sanctions as preventive action against significant public risks). However, for this paradigm to legitimately apply to Indonesia's context, there must be clear evidence that the specific threats require administrative intervention because criminal prosecution would be structurally inadequate. Within this framework, administrative sanctions are warranted not as punitive actions, but as essential interventions to avert excessive harm to collective welfare that cannot be sufficiently mitigated through traditional criminal prosecution alone. Unfortunately, there is a lack of available literature providing comprehensive explanations for this practice in Indonesia, suggesting that further research is needed to better understand the underlying rationale. Certainly, any valid justification that emerges would be duly considered. In the interim, however, this analysis proceeds with the principle that, even though the global community allows administrative detention, academic best practices suggest that departures from conventional legal approaches would benefit from clear justification—therefore indicating that the conventional separation of legal domains should be maintained.

III. Conclusion

This paper illustrates that the international community acknowledges immigration detention as administrative detention and thus falls under administrative law. However, there are concerns about the overlap between administrative and criminal law as immigration detention involves the deprivation of liberty, which is typically regulated under criminal law, but is applied through administrative procedures. This caused the hybrid nature of administration and criminal law called crimmigration.

The paper reveals that crimmigration exists within Indonesian immigration law and has become so intertwined that it gives rise to both substantive and procedural challenges. Substantively, the broad definitions in Article 83 of the 2011 Immigration Law combine administrative and criminal offenses, effectively merging different categories of violations under a single framework. For instance, Article 83(a) and (b) of the 2011 Immigration Law classify certain acts, such as entering Indonesian territory without a valid or expired stay permit, or entering without a valid travel document, as immigration criminal offenses. Despite being criminal in nature, these offenses may also be subject to administrative detention due to the law's broad definitions. Furthermore, Article 83 provides unclear definitions regarding what constitutes threats to public safety, ordered chaos, or violations of the law. This broad scope grants authorities extensive discretionary power, which may be exploited and could result in discriminatory treatment of non-citizens, particularly those from low socio-economic backgrounds.

Procedurally, this substantive overlap creates confusion over which legal pathway should be followed. For example, Article 45 of the Minister of Law and Human Rights Regulation No. 39 of 2021 regarding procedure for investigating immigration crimes stipulates that individuals facing criminal penalties of less than five years should be held in IDCs, while those facing five years or more should be placed in regular detention facilities under criminal procedure. However, immigration violations under Article 83(a) and (b), which carry criminal penalties of five years or more, can still be subjected to administrative detention. This has resulted in a procedural conflict between those articles, thus giving rise to a double detention risk that stems directly from the overly broad substantive provisions, creating legal uncertainty within the immigration procedural system.

To resolve this matter, this paper concludes that the conventional separation of legal domains should be preserved until empirical evidence demonstrates the inadequacy of existing criminal prosecution mechanisms. All immigration-related offenses should proceed through the criminal justice system, while administrative detention should be used only in exceptional circumstances, when it is strictly necessary and justified. Preserving immigration detention as a purely administrative measure is essential not only to maintain legal clarity but also to ensure that its implementation upholds fundamental human rights principles. To address these complexities in civil law system, which prioritize clarity in the classification of law, this analysis proposes that immigration detention should be primarily conceptualized as a temporary holding facility serving two specific purposes. First, it should accommodate individuals facing administrative sanctions, including residence permit revocation, or during periods preceding deportation or repatriation following entry denial. Second, it should apply only when detainees demonstrably pose justified security risks to public safety and order, where utilizing criminal law mechanisms would prove detrimental to society. The definition of public order should be formulated with clear and specific indicators to ensure consistency and prevent the misuse of discretionary power. While complete separation between legal domains may seems unavoidable, legal certainty demands minimizing such intersections wherever possible.

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