Research Paper

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The Issuance of Electronic Identity Cards (E-KTP) to Foreign Nationals (WNA) as a Guarantee of Legal Protection and Human Rights in Semarang City

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ABSTRACT:- This study aimed to identify and analyze the regulatory framework for immigration and population administration related to the issuance of Electronic ID Cards (E-KTP) for Foreign Nationals (WNA) in Indonesia, specifically in Semarang City. It also aimed to analyze the mechanisms and processes for issuing E-KTP carried out by authorized officials and the prescriptive direction of regulations related to the issuance of E-KTP for WNA. This descriptive qualitative study is conducted using a normative legal approach, particularly a conceptual and legislative approach. Based on the research findings, it can be explained that the Constitution of the Republic of Indonesia (UUD 1945) and the applicable regulations have provided equal legal protection and human rights guarantees for both Foreign Nationals (WNA) and Indonesian Citizens (WNI) when receiving public administration services, specifically the issuance of E-ID Cards. The procedure for issuing E-KTP for WNA involves strict requirements, where WNA must first obtain Permanent Stay Permits (ITAP) issued by the Immigration Office Class I TPI Semarang before applying for the issuance of E-KTP at the Civil Registration and Population Office of Semarang. E-KTP for FNs are not valid for political rights (the right to vote and be elected in General Elections).

Keywords: Electronic ID Cards (E-KTP); Legal Protection; Human Rights; Foreign Nationals (WNA).

I. INTRODUCTION

The Indonesian Constitution (UUD 1945) essentially constructs two models of constitutional rights: first, human rights, and second, citizens' rights. The first model, human rights, indicates the state's responsibility to respect, fulfill, and protect the rights of all individuals, regardless of their origin, whether they are Indonesian citizens (WNI) or foreign nationals (WNA). In contrast, the second model, citizens' rights, demonstrates the granting of specific privileges exclusively to Indonesian citizens (WNI).

The differentiation of rights by the UUD 1945 into these two models is as follows. For the first model, human rights, typically, its articles are preceded by the phrase "every person," which is used to emphasize that these rights (every person's rights) are human rights, and the responsibility for upholding them rests with the state and is directed towards all human beings. For example, Article 28A of UUD 1945 states, "Every person shall be entitled to defend his/her life and living." Similarly, Article 28D, paragraph (1) of UUD 1945 states that "Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law".

Therefore, with the protection of citizens (both Indonesian citizens and foreign citizens), the state is not only present to fulfill its obligations but also to uphold the human rights of its citizens. Furthermore, Article 28I, paragraph (4) of UUD 1945 stipulates: *"The protection, advancement, enforcement and fulfillment of human rights shall be the responsibility of the state, particularly the government."*

In contrast, in the second model, citizens' rights, its articles usually begin with the phrase "every citizen," intended to specify the state's accountability to its citizens specifically. For example, Article 28D, paragraph (3) of UUD 1945 states, "Every citizen shall be entitled to obtain equal opportunity in government." The categorization of constitutional rights in UUD 1945 is essential to understanding the constitutional perspective on the Indonesian government's responsibility to its citizens.

Article 26, paragraph (1) of the 1945 Constitution also states that: "Citizens are indigenous Indonesians and people of other nations legalized by laws as citizens." Furthermore, paragraph (2) states: "The inhabitants are Indonesian citizens and foreigners residing in Indonesia." The population residing in a country, from a legal standpoint, comprises citizens (staatsburgers) and foreigners who are not native inhabitants within

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a country's territory (*niet-ingezetenen*). This includes individuals who are not Indonesian citizens, non-natives of Indonesia, or Indonesians who have renounced their citizenship and are currently present within the Indonesian territory and are treated as foreigners (Samidjo in Firmansyah, 2013).

The issuance of electronic identity cards (E-KTP) for foreigners/foreign nationals (WNA) is mandated by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration. According to this law, WNAs eligible for a E-KTP are those who possess Permanent Stay Permits (Izin Tinggal Tetap or ITAP) rather than Limited Stay Permits (Izin Tinggal Terbatas or ITAS). Article 63, paragraph (1) of the aforementioned law states: *"Residents of Indonesian Citizens and Foreigners Who Have a Fixed Residence Permit who have been 17 (seventeen) years or have married or have been conscripted to have E-KTP."*

Thus, the issuance of *E-KTP* is mandatory for all residents, both Indonesian citizens (WNI) and WNA with Permanent Stay Permits (ITAP). The issuance of *E-KTP* represents a form of ensuring legal protection and human rights for citizens. It is further emphasized in paragraph (3) that: "*E-KTP as referred to in paragraph* (1) *applies nationally*." The provisions regarding the issuance of E-KTP for foreigners (WNA) are further regulated by Presidential Regulation (Perpres) Number 96 of 2018 concerning the Requirements and Procedures for Population Registration. According to this Perpres, foreigners can obtain *E-KTP* by fulfilling specific requirements.

The legal protection and human rights of citizens encompass citizens' rights in law and governance, their rights to suitable employment, and their rights to receive education, healthcare, and other public services. These rights are regulated in the 1945 Constitution (UUD 1945), Article 27 paragraphs (1-3), Article 28 (A-J), Article 29, and Article 30 paragraph (1), pertaining to the protection of citizens.

Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration is fundamentally aligned and parallel to the UUD 1945, wherein the issuance of E-KTP to WNA serves as a form of legal protection and human rights, functioning as an identity card rather than a citizenship card. By way of description, based on the database of the Directorate General of Population and Civil Registration (Ditjen Dukcapil) of the Ministry of Home Affairs as of March 2022, there are approximately 13,056 WNA who have applied for E-KTP. WNA from 10 different countries have acquired E-KTP. The most represented countries of origin among WNA are South Korea, followed by Japan, Australia, the Netherlands, China, the United States, the United Kingdom, India, Germany, and Malaysia. The following table describes the number of WNA who have obtained E-KTP.

No	Country	Number of People	No	Country	Number of People
1	South Korea	1,227	6 United States		890
2	Japan	1,057	7	England	764
3	Australia	1,006	8 India		627
4	Netherlands	961	9	Germany	611
5	China	909	10	10 Malaysia 581	
	Total 5,160 Total 3,473				
Sub total: 5,160 + 3,473 = 8,633					

 Table 1: Countries of origin of foreign nationals with the most E-KTP holders

Source: Directorate General of Dukcapil, Ministry of Home Affairs, 2022.

Based on the table above, it can be seen that of the 13,056 foreigners in Indonesia, 8,633 are foreigners who have applied for E-KTP. Meanwhile, the remaining 4,423 foreigners have not yet applied for a E-KTP (coming from other countries outside the 10 countries above).

II. RESEARCH METHODS

This study adopted a normative juridical (doctrinal) approach, utilizing secondary data in the form of library research, consisting of legal regulations and literature. The normative legal approach is employed to describe, explain, analyze, and develop the legal construct of state sovereignty from the perspective of immigration and population administration. This is accomplished through a philosophical and legal regulation approach, involving an examination of all laws and regulations related to the legal issues under investigation, as well as an approach based on concepts derived from the views and doctrines developed within the field of legal studies (Marzuki, 2015). Data collection methods involve inventorying, identifying regulations, analyzing phenomena, and describing the content of other legal sources that are relevant to the research issues at hand (Moleong, 2011). Subsequently, a qualitative descriptive analysis was conducted.

III. RESULTS AND DISCUSSION

Foreign Nationals with Permanent Stay Permits (ITAP)

a.

Law No. 6 of 2011 on Immigration, in Article 1 paragraph 9, in conjunction with Law No. 6 of 2023 on the Determination of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation as a Law, defines a foreign national as follows: *"Foreign National means a person who is a non-Indonesian citizen"*.

In the Indonesian-English translation dictionary, a foreign national is also defined as a *stranger*, *foreigner*, and *alien*, and in legal dictionaries, a foreign national is defined as an individual in a country who is not a citizen of that country (Safaat, 2008). According to Supramono (2012), a foreign national is a person who is not an Indonesian citizen and is currently residing in the territory of Indonesia. This definition also includes foreign legal entities, which are legal entities established under foreign law.

Therefore, a foreign national is an individual who is a foreign national residing in a specific country. These foreigners are all individuals residing in a particular country who are not citizens of that country (Tutik, 2008). They are foreign nationals residing in the territory of Indonesia and only have specific permits to stay in Indonesia (Hadisoeprapto, 1999).

In international law, foreigners in a country are protected to a minimum extent. This protection, as intended, can be categorized into two types (Tutik, 2008) :

(1) Positively, meaning that the country in which the foreigner resides must grant them certain specific rights. Thus, a minimum set of rights must be guaranteed.

(2) Negatively, meaning that a country cannot impose certain obligations on foreigners residing within its borders, such as military service.

The requirement for a foreigner to reside in a specific location is known as *internering*, while the action of expelling a foreigner from Indonesia is referred to as *externering*. Such actions are not novel and the authority of the ruling power to act against foreigners is not an extraordinary occurrence. Such actions are also known in various countries. During the Dutch East Indies period, these actions were regulated under the *Indische Staatsregeling*. The authority of the ruling power to take such actions was termed exorbitant right (*exorbitante recht*). However, these actions turned out to be a dark chapter for the colonizers because the exorbitant right was not only applied to foreigners but also to fellow countrymen (Busroh & Busroh, 1985).

Law Number 6 of 2011 on Immigration, in Article 48 paragraph 3, governs the residence permits in Indonesia as follows:

a) A Diplomatic Stay Permit is granted to foreigners who enter the Indonesian territory with a Diplomatic Visa, and its extension is granted by the Minister of Foreign Affairs.

b) A Service Stay Permit is granted to foreigners who enter the Indonesian territory with a Service Visa, and its extension is granted by the Minister of Foreign Affairs.

c) A Visit Stay Permit is granted to foreigners who enter the Indonesian territory with a Visit Visa, children born in the Indonesian territory, and at the time of birth, their father and/or mother holds a Visit Stay Permit. A Visit Stay Permit expires when the permit holder returns to their home country, when the permit expires when they are subject to deportation, or upon death. The validity period of a Visit Stay Permit for holders of a Single-Entry Visit Visa is a maximum of 60 (sixty) days from the date of entry.

d) A Limited Stay Permit is granted to foreigners who enter the Indonesian territory with a Limited Stay Visa or to foreigners granted a status change, including foreigners who are involved in investment, working as experts, or carrying out duties as religious personnel. A Limited Stay Permit expires when the permit holder returns to their home country and does not intend to re-enter the Indonesian territory when the permit expires when they are subject to deportation, or upon death. The validity period of a Limited Stay Permit is a maximum of 2 (two) years and can be extended.

e) A Permanent Stay Permit is granted to foreigners holding a Limited Stay Permit as religious personnel, workers, investors, senior citizens, mixed-marriage family members, former Indonesian citizens, and former dual citizenship subjects of the Republic of Indonesia. A Permanent Stay Permit may expire when the permit holder leaves the Indonesian territory for more than 1 (one) year or does not intend to re-enter the Indonesian territory, does not renew the Permanent Stay Permit after 5 (five) years, acquires Indonesian citizenship, is subject to deportation, or upon death.

Permanent Stay Permit (ITAP) is an official permit issued by the Indonesian government for foreign nationals who wish to reside and settle in Indonesia. This is regulated under Law No. 6 of 2011 on Immigration, in Article 1 paragraph 23, in conjunction with Law No. 6 of 2023 on the Determination of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation as a Law, in Article 106 paragraph 23, as follows:" *Permanent Stay Permit means a permit granted to a certain Foreign National to reside and remain in Indonesian Territory as an Indonesian resident.*" Furthermore, Article 54 stipulates the following:

Article (1): A Permanent Stay Permit may be granted to:

- a. Foreign National holding a temporary Stay Permit as clerics, workers, investors, and the elderly;
- b. a family member of a mixed nationality marriages;
- c. the husband, wife, and/or children of a Foreign National holding a Permanent Stay Permit; and

d. a Foreign National of a former Indonesian citizen and a child of a former Indonesian dual citizenship subject.

Article (2): "The Permanent Stay Permit as referred to in section (1) is not granted to a Foreign National who does not have a passport pertaining to any country".

Article (3): "A Foreign National holding a Permanent Stay Permit is an Indonesian resident". Article (4): "Further provisions regarding Permanent Stay Permits as referred to in paragraph (1) are regulated in Government Regulations".

Permanent Stay Permits (ITAP) for Foreign Nationals can be obtained through a change of status procedure and/or can be granted directly. The procedure for granting ITAP through a change of status is applicable to:

a. Foreign Nationals holding Limited Stay Permits (ITAS) as religious personnel, workers, investors, and senior citizens;

- b. Mixed-marriage family members;
- c. Spouses, wives, and/or children of Foreign Nationals holding Permanent Stay Permits; and
- d. Former Indonesian citizens and former dual citizenship subjects of the Republic of Indonesia

If a foreign national wishes to obtain a Permanent Stay Permit (ITAP) through a status change procedure from a Limited Stay Permit (ITAS), they must have already resided in Indonesia for more than 3 (three) consecutive years. Alternatively, a foreign national must have been married to an Indonesian citizen for at least 2 (two) years.

On the other hand, a Permanent Stay Permit (ITAP) for foreign nationals granted directly, without undergoing a status change, can be given to:

- a. Former dual citizenship subjects of the Republic of Indonesia who have chosen foreign citizenship.
- b. Children born in Indonesia to foreign nationals holding Permanent Stay Permits.
- c. Indonesian citizens who have lost their Indonesian citizenship in the territory of Indonesia.

To apply for a Permanent Stay Permit (ITAP) through the direct procedure, it can be done via the following link: https://izintinggal-online.imigrasi.go.id/_or by visiting the immigration office in person. The general requirements that need to be prepared before applying for ITAP include a passport, a Limited Stay Permit (ITAS), a domicile certificate, and an integration statement. In addition, there are specific requirements that vary depending on the purpose or intent of the foreign national's presence in Indonesia.

A Permanent Stay Permit will **expire** if the holder leaves Indonesian territory for more than 1 (one) year or does not intend to re-enter Indonesian territory; does not extend the validity period of the Permanent Stay Permit after 5 (five) years; acquires Indonesian citizenship; has their permit revoked by the Head of the Immigration Office or a designated Immigration Officer; is subject to deportation; passes away; returns to their home country and does not intend to re-enter Indonesian territory; returns to their home country and does not return beyond the validity period of the re-entry permit they possess [Article 62 paragraph (1) of the Immigration Law].

Likewise, a Permanent Stay Permit (ITAP) can be **revoked** if a foreign national is proven to have committed a crime against the state as stipulated in the laws and regulations; engages in activities that are or are suspected to be harmful to public order, and security; violates the integration statement; employs foreign workers without a work permit; provides false information in the application for a Permanent Stay Permit; is subject to Immigration administrative actions; or terminates their marriage with an Indonesian citizen through divorce and/or a court decision, except for marriages that have lasted for 10 (ten) years or more. The revocation of the Permanent Stay Permit is carried out by affixing a cancellation stamp on the national passport and withdrawing the Permanent Stay Permit card. This is communicated to the relevant foreign national in writing, along with the reasons [Article 62 paragraph (2)].

The Permanent Stay Permit is granted for a period of 5 (five) years, except for foreign nationals who are spouses, wives, and/or children of foreign nationals holding Permanent Stay Permits and children born in Indonesia from foreign nationals holding Permanent Stay Permits, as the duration of their Permanent Stay Permit will be in accordance with that of the primary permit holder.

The Electronic Identity Card (E-KTP) is an identity card designed using computer-based technology both in terms of its use and physical form. The E-KTP is an administrative document related to population registration that relies on a control and security system based on national population database technology (Tuti,

R., 2013).

E-KTP is the National Identity Card as regulated in Law Number 24 of 2013 concerning Population Administration. The introduction of the E-KTP is part of the administrative reform in the field of population administration initiated through Law Number 24 of 2013, which amends Law Number 23 of 2006 concerning Population Administration. Several fundamental changes are encompassed in Law Number 24 of 2013, namely: *first*, the population registration system, which was previously based on an *active system* where citizens were obligated to report, has been transformed into a *mobile active system* where the government is obliged to record all population events/incidents. *Second*, the E-KTP, which used to be valid for 5 years, is now valid for a lifetime. Third, there is no fee for all document registration in the field of population administration. The prohibition on charging fees, initially only for the issuance of the E-KTP, has been expanded to cover all population documents such as Family Cards (KK), E-KTP, Birth Certificates, Marriage Certificates, Death Certificates, Child Acknowledgment Certificates, and others (Article 79A of Law No. 24 of 2013).

The regulations regarding the E-KTP for foreign nationals are further detailed in Presidential Regulation (Perpres) No. 96 of 2018 on the Requirements and Procedures for Population Registration. According to this Presidential Regulation, foreign nationals can obtain a E-KTP by meeting certain requirements. The requirements for obtaining a E-KTP for foreign nationals include travel documents, proof of residence, and a permanent stay permit.

E-KTP has become one of the national programs that must be implemented by the government, as its execution is considered crucial for the creation of high-quality public services in order to obtain more accurate and detailed population data. Public services, from a legal perspective, are defined as obligations imposed by legislation on the government as the state organizer to fulfill the basic rights of citizens or residents by providing public services (Sirajuddin, et al., 2016). From a public administration perspective, the issuance of the E-KTP is the implementation of policy in an accurate and efficient manner, and public administration agents are influenced not only by official mandates but also by pressure from interest groups, members of the legislative body, and various factors in the political environment (Nugroho, 2011). The functions of the Electronic Identity Card (E-KTP) for Foreign Nationals (WNA) include population administration, security, and ease of access to public and banking services, healthcare, and so forth.

There are differences between the E-KTP for Indonesian Citizens (WNI) and Foreign Nationals (WNA). These differences can be observed in the following table:

No	Differentiating Aspects	E-KTP of Indonesian Citizens (WNI)	E-KTP of Foreign Nationals (WNA)
1	Validity period	Lifetime	There is a validity period in accordance with the permanent residence permit issued by the Directorate General of Immigration, Ministry of Law and Human Rights
2	The language used in writing	Indonesian	Information on gender, religion, marital status, occupation, and written in English
3	The color of KTP_el	Blue	Orange
4	The right to vote in elections	YES	NO

Table 2: Differences between KTP_el of WNI and WNA

Source: Processed from the Ministry of Home Affairs Dukcapil Database, October 2023.

b. Issuance of E-KTP for WNA in Semarang City

In Administrative Law, permits serve the purpose of influencing citizens to adhere to the government's recommended methods for achieving specific objectives. The requirements within permits are intended to control and regulate the use of the permits themselves. Permit recipients are expected to contribute to the realization of a just and prosperous society as envisioned by the government (Ridwan, 2013). Based on verification, identification, and systematization of the permits issued to Foreign Nationals (WNA) residing in the city of Semarang by the authorized authorities, the various forms of permits can be classified and organized into the following table:

No	Type of Permits	Number of people		
1	Visit Permit	275		
2	Limited Stay Permit	4,099		
3	Permanent Residence Permit	516		
	Sub total 4,890			

Table 3: Permits for WNA residing in Semarang Ci	Ta	able 3: Pe	rmits for	WNA	residing	in	Semarang	City
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Source: TPI Semarang Class I Immigration Office, October 2023

Looking at the table above, there are 516 Foreign Nationals (WNA) who have obtained Permanent Stay Permits (ITAP) from the Immigration Office Class I TPI Semarang. However, not all of these 516 WNAs have followed up by applying for the issuance of an Electronic ID Card (E-KTP) from the Civil Registration and Population Office of the city of Semarang. The number of WNA who have obtained ITAP from the Immigration Office Class I TPI Semarang and have proceeded to apply for a E-KTP at the Civil Registration and Population Office of Semarang can be seen in the following table:

Table 4: WNA Holding ITAP and Processing E-KTP in Semarang City			
ITAP of WNA issued by the TPI Semarang	E-KTP of WNA issued by the Semarang City		
Class I Immigration Office	Population and Civil Registration Service		
516	304		

Table 4: WNA Holding ITAP and Processing E-KTP in Semarang City

Source: Semarang City Population and Civil Registration Service, October 2023.

In reality, the reason why Foreign Nationals (WNA) who hold Permanent Stay Permits (ITAP) have not yet or have not taken steps to obtain an Electronic ID Card (E-KTP) from the Civil Registration and Population Office of Semarang is due to their lack of awareness about the information and procedures for obtaining a E-KTP, as well as the significance of having one when residing in the city of Semarang. This obstacle has resulted in these WNAs not reporting and applying for E-KTP at the Civil Registration and Population Office. Therefore, the Semarang City Government, specifically the Civil Registration and Population Office, has coordinated with the Immigration Office Class I TPI Semarang to conduct awareness campaigns in order to foster an understanding of the importance of population registration for foreign nationals who have met all the requirements for obtaining a E-KTP.

IV. CONCLUSION

Based on the above explanations, the following conclusions can be drawn: (1) The Constitution of the Republic of Indonesia (UUD 1945) and its organic regulations as the implementing rules have provided legal protection and recognition, as well as acceptance for foreign nationals (WNA) equal to Indonesian citizens (WNI) in obtaining Electronic ID Cards (E-KTP). (2) Foreign nationals (WNA) in the city of Semarang who have obtained Permanent Stay Permits (ITAP) from the Immigration Office Class I TPI Semarang have not all applied for and processed the issuance of E-KTP at the Civil Registration and Population Office of Semarang. This is primarily due to the fact that many of them are still unaware of the information and procedures for obtaining a E-KTP, as well as the importance of having a E-KTP when residing in the city of Semarang. Therefore, the Civil Registration and Population Office of Semarang has coordinated with the Immigration Office Class I TPI Semarang to conduct awareness campaigns for WNA who have obtained ITAP, aiming to help them understand the significance of having a E-KTP and its utility

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