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## Table Of Contents

<b>Journal Cover .....</b>	<b>1</b>
<b>Author[s] Statement.....</b>	<b>3</b>
<b>Editorial Team .....</b>	<b>4</b>
<b>Article information .....</b>	<b>5</b>
Check this article update (crossmark) .....	5
Check this article impact .....	5
Cite this article.....	5
<b>Title page.....</b>	<b>6</b>
Article Title .....	6
Author information .....	6
Abstract .....	6
<b>Article content .....</b>	<b>7</b>

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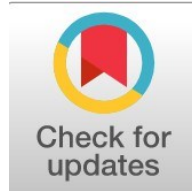
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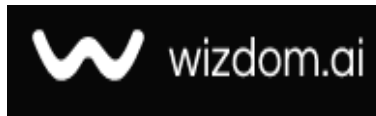
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# Implication of The Strict Liability Principle in Immigration Criminal Cases in Indonesia: Implikasi Prinsip Tanggung Jawab Mutlak Dalam Kasus Pidana Keimigrasian di Indonesia

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## Abstract

**General background:** Immigration governance functions as a selective mechanism to safeguard national security amid increasing foreign arrivals and recurring administrative infractions. **Specific background:** Despite Indonesia’s commitment to the principle of *geen straf zonder schuld*, immigration law uniquely allows punishment based solely on the fulfillment of objective elements such as overstay, unlawful entry, or presence in prohibited areas. **Knowledge gap:** Although the strict liability principle is applied in court decisions, its legal basis remains implicit due to the absence of explicit statutory provisions detailing which immigration offenses fall under this doctrine. **Aims:** This research analyzes the application, legal foundations, and consequences of strict liability within immigration criminal proceedings. **Results:** Findings reveal significant inconsistencies between legislative norms and judicial practice, posing risks to legal certainty, fairness, and the protection of suspects’ procedural rights. **Novelty:** The study identifies critical normative gaps that permit broad administrative discretion and potential overcriminalization. **Implications:** Clearer statutory formulation and strengthened procedural safeguards are necessary to balance state security interests with substantive justice and human rights protections.

## Highlights:

- Strict liability in immigration law is applied implicitly, creating uncertainty in defining which offenses qualify.
- This principle conflicts with the fundamental doctrine of *geen straf zonder schuld*, potentially weakening suspect rights.
- Clearer statutory regulation is needed to prevent overreach and ensure proportional, just enforcement.

**Keywords:** Strict Liability, Immigration Law, Legal Certainty, Mens Rea, Fair Trial

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## Introduction

Immigration is the movement of people from one country to another. Based on Article 1 paragraph 1 of Law No. 6 of 2011 concerning Immigration, immigration is the movement of people entering or leaving Indonesian territory and its supervision in order to maintain the sovereignty of the state. Immigration policy plays an important role in maintaining a country's national security. Through selective policies, the state regulates the flow of foreign nationals entering and leaving the country, ensuring that only individuals who are beneficial and do not endanger security and order are allowed to enter. In general, the purpose of entering another country's territory is for tourism, work, asylum seekers, refugees, and so on. Regardless of the reason, such entry and exit must be accompanied by valid documents recognized by immigration officials, such as passports and visas. Both documents must be issued by the relevant immigration officials to ensure their validity and are subject to certain restrictions depending on their type.

However, in reality, there are often administrative immigration violations that lead to immigration crimes. This occurs due to the principle of *ultimum remedium*, such as the use of false documents, entering and leaving Indonesia without valid documents, human smuggling, and *overstaying*. In 2024, Indonesia received a total of 13,902,420 foreign nationals entering the country, and as of September 2024, based on data released by the UNHCR, the number of asylum seekers and refugees registered in Indonesia reached 11,735 people [3]. Although the total number of immigration violations in Indonesia is difficult to determine because the available data is partial and varied, immigration violations occur every month of the year. For example, in 2022, the Director General of Immigration took action against 1,033 administrative violations in the period from January 1 to April 30, 2022 [4]. Of the millions of foreign nationals who entered Indonesia in 2024, according to a report published on the Directorate General of Immigration's social media, they have prosecuted 77 people consisting of foreign nationals (WNA) and Indonesian citizens (WNI) during the first semester of 2024. This number has increased by 166% compared to the first semester of 2023, with around 41% of cases being criminal offenses for travel document violations and expired visas or suspected fake travel documents [5]. These immigration criminal cases often occur for several reasons, such as ignorance or lack of information, health emergencies or accidents, and intentional reasons for specific purposes, which are often admitted by the foreign nationals concerned.

The reason for a violation or aspect of criminal intent (*mens rea*) is one of the important requirements in criminal liability. Indonesia is a country that adheres to the principle of *no crime without fault*, known as *Geen Straf Zonder Schuld* (*nulla poena sine culpa*). This principle is generally applied to the Indonesian legal system, especially in the general criminal system, which states that a person cannot be punished if they are not proven to have committed a crime based on malicious intent or negligence. However, the principle of *no crime without fault* with the application of *strict liability* is also applied in Indonesia for several excluded categories of law, such as special environmental criminal law and immigration law, especially in cases of *overstaying* in immigration criminal offenses. More specifically, this principle contradicts the principle of general criminal law because criminal violations of immigration law do not require proof of malicious intent or negligence in the act.

The difference in the application of principles between general criminal law (*nulla poena sine culpa*) and special criminal law, especially in immigration law (*strict liability*), has become a new problem in Indonesia that needs to be further reviewed in relation to its implementation and the legal consequences that will arise from its application in case decisions. In cases of immigration *overstays*, if the perpetrator did not actually commit the offense with malicious intent or deliberation, but rather due to an emergency situation such as a health condition, they will still receive the same punishment as defendants who deliberately violated the law with a specific purpose. Suspects have the right to freely provide information to investigators and judges and to provide a defense based on Articles 51 and 52 of the Criminal Procedure Code. However, this principle means that suspects in immigration criminal cases cannot provide a defense or statement, or even if they can, the statement cannot be considered by investigators or judges due to the application of the principle of *strict liability* in immigration law. Indirectly, this difference has the potential to create an impression of injustice in the treatment of suspects.

The application of the principle of *strict liability* in immigration criminal law presents a significant legal paradox. This principle is intended to accelerate law enforcement, avoid the burden of proving *mens rea*, and strengthen the aspect of deterrence. However, as explained above, the principle of *strict liability* contradicts the fundamental principles of criminal law and human rights, particularly the principle of *no crime without fault* (*nulla poena sine culpa*) and the principle of *fair trial*. In the context of human rights, which is also related to the principle of *fair trial*, the application of *strict liability* also violates the principle of presumption of innocence guaranteed in human rights instruments. When a person is punished without the need to prove subjective fault, then factually and normatively, suspects can be immediately punished without having intent or negligence, which in classical criminal law doctrine is considered unfair and disproportionate.

In immigration practice, administrative violations are punishable in accordance with the principle of *ultimum remedium*, but also with the principle of *strict liability*. This application, in the context of human rights protection and supported by the rights of suspects as regulated in Indonesian law, shows that there is still a lack of legal protection for suspects even without subjective fault. Furthermore, in the context of the principles of justice and legality, which are also related to one of the main problems concerning the absence of clear and explicit standard criteria in determining which immigration offenses are included in *strict liability*, this principle is still unclear and open to multiple interpretations, thus potentially violating both principles. Without definite normative guidance, especially in Indonesia with its civil law system, law enforcement officials can interpret the principle of *strict liability* broadly, eroding legal certainty and opening up opportunities for abuse of authority.

The rights of suspects, especially the right to defend themselves, are regulated in Article 28G of the 1945 Constitution,

Articles 8 and 54 of the Criminal Code, and Article 14 paragraph (3) of the ICCPR. These rights include the right to know the charges, to obtain legal assistance, to prepare and present a defense, and to receive a fair trial. The rights of suspects that have been regulated are generally applied to general and special criminal cases, including immigration law. However, when the principle of *strict liability* is applied, the position of the rights of suspects becomes very vulnerable. In immigration law, the process of presenting a defense by the suspect or their legal counsel continues as usual, as does the application of other suspect rights in the immigration case examination process. However, in practice, the principle of *strict liability* reduces the effectiveness of the protection of these rights because suspects can still be punished without consideration of their subjective fault.

Thus, based on general criminal law principles, the principle of legality is clearly potentially violated because there are no explicit regulations regarding the categories of actions subject to *strict liability*, opening up room for broad and uncertain interpretation. Then, in the principle of fault, this principle will remove the prerequisite of fault, which is a fundamental requirement in the general criminal justice system. The principles of individualization of punishment and substantive justice should also be applied by taking into account the personal circumstances and of the offense and imposing sanctions with real justice that is not merely formal without taking subjective factors into account. In the context of human rights, this principle also erodes the guarantee of a *fair trial* because suspects can be punished without a complete evidentiary process.

Based on this discussion, the question arises as to whether this principle will render the suspect's right to self-defense a legal formality because it directly overrides the suspect's right to subjective defense. In practice, the right to defense will become insubstantial because even if the suspect defends himself argumentatively, the judge is not bound to assess the element of intent in *strict liability* cases. Therefore, the application of the *strict liability* principle in immigration law has the potential to conflict with the principles of substantive justice, human rights protection, and legality. Thus, further research is needed on whether the *strict liability* principle in immigration law has been applied in accordance with applicable regulations and what legal consequences will arise from the application of this principle.

## Method

In supporting a study, it is necessary to categorize the type of research and specify the approach to the problem, data sources, data collection methods, and data analysis techniques. This study uses the normative juridical category because it uses a review of the legal norms and principles contained in or outside the legislation. The focus of the study is the overlap of the Indonesian criminal justice system with special immigration crimes.

With this type of research, the problem approach in this study is a *statute approach* by analyzing laws and regulations related to legal issues used as research, a *case approach* related to this topic, and a *micro comparative approach* by comparing principles in general criminal law and special criminal law in Indonesia. The data sources for these approaches were taken from Law No. 6 of 2011 on Immigration, the Criminal Code, and the Criminal Procedure Code as primary data, and other supporting data such as books, scientific journals, and language dictionaries as supplements.

The data was obtained through *library research* and then analyzed using qualitative analysis, which involved explaining in detail and systematically the solutions to the problems identified.

## Results and Discussion

### A. Application of the Strict Liability Principle

Immigration law, the implementation of which depends on various legal classifications such as State Administrative Law, Criminal Law, Civil Law, and International Law. Immigration law is predominantly related to the context of state administrative law, which regulates the state's administrative actions towards foreign nationals (WNA) and Indonesian citizens (WNI) in terms of entering and leaving the country, for example, the granting of visas, temporary residence permits, and permanent residence permits, which are decided by administrative officials (Directorate General of Immigration). Meanwhile, in the context of Criminal Law, it applies when there are immigration violations that carry criminal sanctions, such as cases of illegal immigrants, document forgery, and human smuggling. Immigration acts as a form of social control, which, according to Michel Foucault in his theory of *the surveillance state*, is a form of modern surveillance that spreads power evenly throughout society and *disciplinary power* that acts as a control mechanism that shapes individual behavior through normalization and internalized surveillance. Immigration makes its legal subjects, especially foreign nationals, internalize self-surveillance by adjusting their behavior in accordance with existing social norms. This system strengthens power by regulating behavior through normalization and continuous surveillance, resulting in a broadly orderly society without the need for repressive measures.

The focus is on the perspective of immigration criminal law, which is partly related to criminal law in general with the application of several principles such as the principle of legality, the principle of *equality before the law*, the principle of personality, the principle of presumption of innocence, the principle of swift and simple justice, the principle of no crime without fault, the principle of territoriality and universality, the principle of openness, the principle of protection, and so on. Some of these principles are applied universally by all countries, such as the principle of personality and the principle of legality, which are applied comprehensively. However, there are also principles that are applied differently and are left to the government, depending on the legal system, and are adjusted to the political climate of the country.

Criminal acts categorized as immigration crimes include several types, regulated in Articles 113 to 135, which include:



- a. Entering or leaving Indonesian territory without going through immigration checks (Article 113);
- b. Foreigners who do not fulfill their obligations (Article 116);
- c. Foreigners staying in Indonesian territory without valid travel documents and visas (*overstay*) (Article 119);
- d. Using false travel documents or forging documents (Article 120);
- e. Human trafficking (Article 124, re-regulated in the TPPO Law);
- f. Misuse of visas or residence permits granted (Article 122);
- g. Providing false documents or data to obtain a visa or residence permit (Article 121 & 123);
- h. Foreign nationals present in restricted areas (Article 125);
- i. Entering into a sham marriage to obtain citizenship (Article 135);
- j. and other details stipulated between or after the relevant articles.

In addition to criminal law, immigration law is also closely related to criminal liability. (discuss criminal liability)

The provisions related to criminal liability in the Immigration Law are quite interesting because they adhere to the principle of *dualism*. Absolute liability in criminal offenses is also regulated in the Provisions Chapter of the Immigration Law, which states that according to this theory, the element of fault does not need to be proven in a criminal act. A violator may face criminal punishment as long as it can be proven that these elements have been violated. Another example is Article 125, which stipulates that "Any foreigner who is present without permission in a certain area that has been declared off-limits to foreigners shall be punished with imprisonment of up to 3 (three) years and/or a fine of Rp300,000,000 (three hundred million rupiah). Therefore, based on the provisions of this article, if a foreign national does not have permission to be in a restricted area, they may be subject to criminal penalties. In this case, it is not necessary to prove whether the act was committed intentionally or negligently.

The Immigration Law itself does not clearly and significantly regulate which criminal acts will be subject to *strict liability* in law enforcement, nor do Minister of Law and Human Rights Regulation No. 39 of 2021 concerning Procedures for Investigating Immigration Crimes and Minister of Law and Human Rights Regulation No. 4 of 2017 concerning Procedures for Immigration Supervision. This has become a legal loophole that has a major impact on legal uncertainty. However, several decisions related to immigration crimes have directly proven that the principle of *strict liability* is applied as it should be in Indonesia.

One of the criminal acts often associated with immigration crimes is the criminal act in Article 119 paragraph (1), which clearly states: "Any foreigner who enters and/or is in Indonesian territory without a valid travel document and visa as referred to in Article 8 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp500,000,000.00 (five hundred million rupiah). Furthermore, the implementation of this criminal offense in court decisions has also applied the principle of *strict liability* without proving the intent of the violators, and the judge has declared them guilty in cases of *overstaying* and entering Indonesian territory without official permission.

One real case in Indonesia is the West Jakarta Court Decision No. 1972/Pid.Sus/2017/PN.Jkt.Brt dated January 23, 2018, which is related to violations of overstaying in accordance with Article 119 of the Immigration Law, and the defendant was found guilty. The defendant, Nnamchi Benneth Nnamdi, was found guilty and sentenced based on the length of *the overstay* and the defendant's cooperative attitude during the trial. The judge's verdict was in accordance with the existing regulations, namely imprisonment and a fine. The verdict also remains legally binding.

The case has been handled in accordance with Indonesian immigration law, applying the principle of *strict liability* as appropriate. *Overstaying* can occur for various reasons, including intentionality, negligence, emergencies, or even being a victim of the system [9]. Based on experience and media reports, particularly Reddit (*an international online media platform* for sharing content, news, ideas, and stories as a forum), Indonesia has become one of the experiences shared several times by foreign nationals when they visit Indonesia. Various experiences in the Indonesian Immigration section are the spotlight and an important focus of this study. Posts related to various foreign nationals who faced obstacles during the immigration check process, and being unable to return to their home countries for various reasons, such as not knowing that the immigration office is closed on weekends, not knowing that they have exceeded their stay permit, or even not knowing about new rules that were suddenly introduced during the pandemic, to other possibilities that occur when approaching the end of their stay permit (accidents, disasters, etc.).

In addition, another case that often occurs and is most frequently decided by the Indonesian Supreme Court regarding Indonesian immigration crimes is entering Indonesian territory without valid letters or documents. One such case is the Jayapura Court Decision Number 489/Pid.Sus/2019/PN Jap. This case involved two defendants, who were found guilty and sentenced to one (1) year in prison and a fine of Rp100,000,000 for violating Article 119 paragraph (1) of the Immigration Law and Article 113 paragraph (1) of the Immigration Law, which reads Any person who intentionally enters or leaves the territory of Indonesia without undergoing inspection by an Immigration Officer at an Immigration Checkpoint as referred to

in Article 9 paragraph (1) shall be punished with imprisonment of up to 1 (one) year and/or a maximum fine of Rp100,000,000.00 (one hundred million rupiah)."

The two defendants were arrested on the spot by Immigration Officers while crossing the border between Jayapura, Indonesia, and Sisano, Papua New Guinea (PNG). The defendants were carrying betel nuts to be sold at Hamadi Market, Jayapura City, Indonesia. In this case, the judge ruled that the defendants deliberately entered or left Indonesian territory without going through immigration inspection. The defendants were arrested in Indonesia while attempting to return to Papua New Guinea by *longboat* and were stopped for inspection of their travel documents, such as visas and passports, but the defendants were unable to produce them and were taken for further investigation. The two defendants were found guilty of deliberately committing immigration crimes in Indonesia because the purpose of their arrival was to sell betel nuts and this was done as a regular routine. The principle of *strict liability* was clearly applied in this case because the defendants clearly involved an element of intent that did not need to be proven as it had occurred as a routine activity. In the verdict of this case, the only evidence presented was the watercraft, which was returned to its owner.

The principle of *strict liability* is clearly not only applied in these two types of cases, but also in other cases, such as violations of Article 125 of the Immigration Law concerning Prohibited Areas in Indonesia, which reads "Any foreigner who is present without permission in a certain area that has been declared off-limits to foreigners as referred to in Article 48 paragraph (4) shall be punished with a maximum imprisonment of 3 (three) years and/or a fine of Rp300,000,000.00 (three hundred million rupiah)". Although no actual cases of violations of this article have been found, this rule is enforced with *strict liability*. For example, if a foreign national is found in a restricted area designated by the Indonesian government and then the foreign national cannot show a letter or proof of permission for their presence in the area, the person concerned will automatically be subject to criminal penalties in accordance with the applicable law, namely a maximum imprisonment of 3 (three) years or a fine of IDR 300,000,000, without any effort to prove whether the person concerned intentionally, unintentionally, knew or did not know about the status of the area.

The three case examples involving regulations in the Immigration Law indirectly prove that the principle of *strict liability* in Indonesia is indeed applied in practice, both in the issuance of verdicts and in the formulation of laws. This principle of *strict liability* applies to various articles, but this study only discusses Articles 113, 119, and 125 as the articles most frequently applied to immigration crimes in Indonesia and also the most relevant to the application of *strict liability*. After analysis, it was found that none of the three articles specifically mention absolute liability or the principle of *strict liability* itself. The wording of these articles does not state that violations of immigration crimes such as *overstaying*, entering or leaving Indonesian territory without valid documents, without official immigration officer checks, and presence in prohibited areas are criminal acts that do not require any proof of intent or negligence. This principle is only applied directly in a court decision without any clear accompanying wording in the law. This gap clearly creates a large and significant legal loophole, resulting in legal uncertainty and opening up opportunities for *overreach* by immigration officers who can interpret the rules narrowly and exaggerate their authority over law enforcement that is not clearly regulated in legislation.

As a country based on the rule of law, there is a perspective that reinforces the importance of written law in stigmatizing society, namely Pierre Bourdieu's perspective, which states that symbolic power is a form of power that operates through subtle mechanisms and is socially recognized as legitimate and reasonable, so that it can stigmatize through the law by becoming an instrument that not only regulates behavior formally, but also shapes social recognition and perceptions of what is considered normal and legitimate. Symbolic power, which means the performativity of the law in providing written regulations, can be a form of powerful authority because it has a certain legitimacy and ratification by those in authority. The state uses the law, including immigration law, as a tool to stigmatize certain groups with symbolic legitimacy, which then reinforces the dominant social position in a subtle but effective way.

## B. Legal Consequences of the Strict Liability Principle

The implementation of immigration law in Indonesia based on the principle of *strict liability* needs to be reviewed further. Regulations that are not specifically regulated raise the first issue related to the general principle of criminal law, namely the principle of legality. In addition, the general principle of criminal law, which also has the principle of "*geen straf zonder schuld*" meaning "no punishment without guilt," clearly contradicts the principle of "*strict liability*." Immigration law, which is a special legal regulation, should not contradict general criminal law, although in reality it is not only regulations related to immigration law that have problems with legal paradoxes and the general principles of Indonesian criminal law. The beginning of this problem raises other issues in the implementation of immigration law. The principle of legality will affect the principle of *fair trial* in the evidentiary process. In addition, the impact on the individual concerned relates to their rights, both as a human being and as a suspect in law. This one problem will lead to more legal problems arising, both in the implementation of the law and for the individual themselves. Therefore, the implementation of the principle of *strict liability* is important to discuss in order to achieve the legal ideal of substantive justice.

First, regarding the paradox of the general criminal principle of no crime without fault with absolute responsibility. The discussion regarding fault and criminal responsibility initially arose due to the absence of a uniform pattern in determining court decisions based solely on the principle of *fait materiel*, which means reviewing whether the perpetrator has fulfilled the elements of the criminal act or not. This view was widely accepted until it was no longer considered satisfactory, leading to the introduction of grounds for the abolition of criminal punishment in judicial practice through *the Arrest Hoge Road 1916*, namely the principle of "no fault whatsoever" and the principle of "no crime without fault" (*geen straf zonder schuld*), which emphasized that the element of fault plays a very important role in criminal law. Fault cannot be viewed solely as a mental element (*mens rea*) inherent in a criminal act, but rather as the main factor that determines whether or not a person can be held criminally responsible. Therefore, law enforcement officials must first investigate whether a person's actions

were based on malicious intent or negligence. In Indonesian legal practice, this principle was first applied in the Supreme Court Decision of April 13, 1957. However, the regulation of this principle is implied in various laws and regulations and is rarely regulated specifically. In the Criminal Code, criminal liability is linked to grounds for exemption from punishment, as stipulated in Articles 44, 48, 49, 50, and 51. Furthermore, even Law No. 8 of 1981 on Criminal Procedure Code Article 183 mandates the importance of the element of fault in imposing punishment on the defendant, but other information or regulations governing this matter are still very limited. Then, Law No. 4 of 2004 on Judicial Authority, Article 6 paragraph (2) and Article 8, essentially show that fault and criminal liability play a very important role in the punishment of defendants, but this is still minimally regulated in legislation [11].

Meanwhile, the principle of *strict liability* is a form of legal responsibility whereby the defendant can be found guilty simply for having committed a prohibited act or for having fully fulfilled the elements of a criminal act, without the need to prove the existence of fault, negligence, or malicious intent. This principle clearly contradicts the general criminal principle of no punishment without fault. This principle was first implemented in Indonesia through Law No. 23 of 1997 concerning Environmental Management, which was later amended to Law No. 32 of 2009 concerning Environmental Protection and Management, which explicitly mentions the concept of *strict liability* in Article 88. This paradox was accepted by many legal figures and philosophers even before it was officially introduced in Indonesia. For example, *the Model Penal Code* states that provisions regarding fault (*culpability*) are a direct attack on the idea of absolute or strict liability. Francis B. Sayre, in his classic article "*Public Welfare Offenses*," argues that because the real threat to society is intentional undesirable actions, malicious intent must remain an element of criminal law. Then there is Jerome Hall, who is the most active and consistent critic of the idea of absolute responsibility. He firmly rejects it because it is considered contrary to the development of rational criminal law, stating, "It is impossible to maintain absolute responsibility by referring to the criteria available to assess the influence of law on human behavior. All that remains is the myth that through unknown deviations, criminal law can achieve good results from absolute responsibility."

In the context of Indonesian immigration law, which also applies the principle of *strict liability* in its regulations, it is not widely known by the general public compared to how it is applied in environmental law as the initial implementation of this principle in Indonesia. In fact, its application in the principle of immigration law, which also involves foreign nationals, is considered complex in order to minimize immigration crimes in Indonesia. Thus, as long as the immigration crime has been proven to have been committed, the defendant will be subject to immigration criminal sanctions. This principle, which is applied in Indonesian immigration law, contradicts the principle in the Indonesian criminal justice system, thereby creating new problems. According to Schaffmeister, "the use of fault as the basis for punishment is not a requirement under empirical law, but a normative principle." Another issue is that this principle is not specifically mentioned in immigration legislation, unlike regulations in environmental law.

This lack of specificity raises a second problem, namely that it contradicts one of the important principles of law, namely the principle of legality (*nulla poena sine culpa*). There are several principles that are applied comprehensively and universally, one of which is the principle of legality. The principle of legality is related to the general principle of "*geen straf zonder schuld*" (*no punishment without guilt*), which guarantees the limits of legal activity. This means that there can be no criminal prosecution unless there is a clear legal provision beforehand. This principle is also in line with Aristotle's legal theory of *Justice as Proportional Equality* or *Reificatory Justice*, which relates to the concept of proportionality in the distribution of rights and resources and the restoration of balance in the event of injustice between individuals through appropriate corrective mechanisms. Both concepts are oriented towards social and moral balance and the application of concrete and adaptive justice. This principle is important and fundamental because it guarantees certainty and provides legal protection to individuals so that they are not arbitrarily criminalized and ensures that judges cannot interpret the law too broadly by imposing penalties without a legal basis that has been previously regulated.

Meanwhile, the principle of *strict liability* still has legal loopholes regarding the clarity of which immigration crimes are subject to the implementation of absolute responsibility. This not only contradicts the principle of legality, but also has the potential to lead to *overreach* and *overcriminalization*. *Overreach* has the potential to create legal uncertainty because immigration crimes are initially processed by immigration officers, not judges or prosecutors. Immigration officers, as the initial law enforcers in the field of immigration, have a greater potential for *overreach* because there are no specific regulations regarding the application of this principle to any type of immigration crime, which will lead to legal uncertainty and inconsistency in law enforcement by immigration officers themselves. Meanwhile, the potential for *overcriminalization* exists because many immigration crimes are still classified as administrative violations. If they are criminalized, they will become overcriminalized, which will burden the judicial system and cause negative stigma against the perpetrators even though they have *only* committed administrative immigration violations. In addition, this principle, which places responsibility without the need for proof of guilt, will limit the authority of judges in exercising *judicial discretion*, which is the authority of judges to make decisions based on legal considerations and facts in a case, particularly in terms of determining the elements of guilt, which will be limited. *Judicial discretion* will still exist, but it will become narrower and focus on other non-subjective technical aspects related to the next issue, namely the rights of suspects.

The third issue relates to the rights of suspects. The rights of suspects are regulated in the Criminal Procedure Code (KUHAP), specifically Articles 50-68, with the following details:

- a. The right to prompt examination and trial (Article 50);
- b. The right to receive clear notification regarding the charges and indictment (Article 51);
- c. The right to provide explanations to investigators or judges (Article 52);

d. The right to obtain an interpreter (Articles 53 and 177);

e. The right to legal assistance (Articles 54, 55, and 56);

The right to maintain contact with and be visited by legal counsel, doctors, relatives, friends, and others (Articles 57 to 63);

a. The right to be tried in a public hearing (Article 64);

b. The right to call witnesses (Article 65);

c. The right not to be burdened with the burden of proof (Article 66);

d. The right to appeal the decision of the court of first instance (Article 67);

e. The right to request compensation and rehabilitation (Article 68).

The focus of relevance to the principle of *strict liability* in immigration law is in Article 52, which concerns the right to provide explanations to investigators or judges. In addition to the Criminal Procedure Code, the right of suspects to provide explanations or defend themselves is also regulated in Article 28G of the 1945 Constitution, Articles 8 and 54 of the Criminal Code, and Article 14 paragraph (2) of the ICCPR (International Covenant on Civil and Political Rights). With various regulations governing the rights of suspects, it shows that these rights are applied universally and also apply to specific laws such as the Immigration Law. However, the application of the principle of *strict liability* in immigration law makes the realization of the rights of suspects very vulnerable. The process of providing explanations by suspects or their legal representatives will continue, but it will reduce the effectiveness of the protection of these rights because suspects will still be prosecuted without considering their own subjective fault. Legal protection for suspects from actions that violate their human rights by investigators is very important, especially for suspects who are unfamiliar with national law (foreign nationals) and will find it difficult to request or demand their rights [21]. The application of this principle will render the judicial process, including the fulfillment of the suspect's rights, especially their right to provide explanations, a mere formality because this principle allows perpetrators to be held accountable without the need to prove intent or negligence, thus potentially violating the suspect's rights if this principle is applied without adequate legal protection.

The rights of suspects are also consistent with the principle of *fair trial*, one element of which is the right to be heard. This principle is defined as a trial process that must be conducted in accordance with established procedures, be honest and objective from start to finish, and involve various stages in the criminal justice system, from investigation to imprisonment. Law enforcement officials have an obligation to remember the essence of humanity and always treat suspects as legal subjects who have full rights to defend themselves. Everyone has the right to these rights, including foreign nationals involved with Indonesian law, who must be treated without discrimination. Thus, if the rights of suspects are violated by law enforcement officials, including immigration officers, or if the process is merely a formality because it prioritizes other principles, there will be a decline in the effectiveness of law enforcement in general.

## Conclusion

Indonesian immigration law, although rooted in administrative law, implicitly applies the principle of strict liability in certain criminal cases—an approach evidenced by court decisions such as West Jakarta District Court No. 1972/Pid.Sus./2017/PN.Jkt.Br and Jayapura District Court No. 489/Pid.Sus/2019/PN Jap, where judges imposed immigration penalties solely on the basis of proven prohibited acts without assessing subjective fault. This research demonstrates that strict liability, though not expressly regulated in Law No. 6/2011 or its derivative provisions, has developed as a *de facto* criminal liability regime within immigration law, creating a distinct departure from the foundational principle of *geen straf zonder schuld* and raising concerns related to legality, overreach of administrative authority, and risks to fair-trial guarantees. The findings highlight the urgent need for regulatory reform to explicitly delineate which immigration offenses warrant strict liability and to distinguish technical, security-related crimes from administrative violations that may lack malicious intent. Further research should explore comparative models of immigration strict liability in other jurisdictions, empirical impacts on foreign nationals, and mechanisms for rights-protection under absolute liability frameworks. The impact of this research is significant: it provides evidence of doctrinal inconsistency within Indonesia's criminal law system, informs policymakers on the need for clearer statutory guidance, and underscores the importance of balancing national security with substantive justice and procedural fairness in immigration enforcement.

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## References

1. N. Hendrawan, L. Marsaulina, and M. Shatrya, "Peran dan Pengawasan Keimigrasian dalam Menghadapi Ancaman Kedaulatan Negara," *Jurnal Ilmu Ilmu Pemerintahan*, vol. 5, no. 12, 2022. [Online]. Available:



<https://doi.org/10.54371/jiip.v5i12.1184>

2. Badan Pusat Statistik, "Jumlah Kunjungan Wisatawan Mancanegara per Bulan ke Indonesia Menurut Pintu Masuk, 2008–Sekarang (Kunjungan)," BPS Statistics Indonesia, 2025. [Online]. Available: <https://www.bps.go.id/id/statistics-table/2/MTE1MCMY/kunjungan-wisman-ke-indonesia--maret-2025.html>
3. K. Perdhana, "Prinsip Kedaulatan Absolut dan Pendekatan Principal-Agent Theory: Reformasi Pengelolaan Pencari Suaka dan Pengungsi di Indonesia," Direktorat Jenderal Imigrasi, 2025. [Online]. Available: <https://www.imigrasi.go.id/berita/2025/01/02/prinsip-kedaulatan-absolut-dan-pendekatan-principal-agent-theory-reformasi-pengelolaan-pencari-suaka-dan-pengungsi-di-indonesia>
4. A. Safitri, "Imigrasi Tindak 1.033 Pelanggaran Administratif Keimigrasian dalam Empat Bulan Terakhir," Direktorat Jenderal Imigrasi, 2022. [Online]. Available: <https://www.imigrasi.go.id/berita/2022/05/23/imigrasi-tindak-1-033-pelanggaran-administratif-keimigrasian-dalam-empat-bulan-terakhir>
5. Direktorat Jenderal Imigrasi, "Data Pelanggar Pidana Imigrasi 2024," Instagram, 2024. [Online]. Available: <https://www.instagram.com/reel/C9wnErhPhqh/>
6. D. Wardhana, "Fair Trial dalam Proses Peradilan Pidana di Indonesia," Undergraduate Thesis, Universitas Islam Indonesia, 2016. [Online]. Available: <https://dspace.uui.ac.id/handle/123456789/9059>
7. N. Ridha, "Proses Penelitian, Masalah, Variabel dan Paradigma Penelitian," Hikmah, vol. 14, no. 1, pp. 62–70, Aug. 2020.
8. G. Ceven, M. Korumaz, and Y. E. Omur, "Disciplinary Power in the School: Panoptic Surveillance," Educational Policy Analysis and Strategic Research, vol. 16, no. 1, pp. 153–171, Mar. 2021, doi:10.29329/epasr.2020.334.9
9. TMTAK Consultant, "Overstay Adalah: Arti, Sanksi, dan Solusinya," TMTAK Indonesia, 2025. [Online]. Available: <https://tmtak.co.id/overstay-adalah>
10. M. Petzke, "The Culture of Official Statistics: Symbolic Domination and 'Bourgeois' Assimilation in Quantitative Measurements of Immigrant Integration in Germany," Theory and Society, vol. 52, no. 2, pp. 213–242, Mar. 2023, doi:10.1007/s11186-022-09503-2
11. C. Huda, Dari 'Tiada Pidana Tanpa Kesalahan', Menuju Kepada 'Tiada Pertanggungjawaban Pidana Tanpa Kesalahan', Jakarta: Kencana, 2006.
12. A. Simester, "Strict and Constructive Liability," Oxford Studies in Philosophy of Criminal Law, pp. 289–325, Feb. 2021, doi:10.1093/oso/9780198853145.003.0013
13. S. A. Saputro, "Pemberlakuan Prinsip Strict Liability dalam Pembuktian Unsur Tindak Pidana Lingkungan Hidup (Studi Kasus Perkara Nomor 3840 K/Pid.Sus.LH/2021)," Universitas Gresik Institutional Repository, 2021. [Online]. Available: <http://elibs.unigres.ac.id/id/eprint/4033>
14. R. A. Epstein, "A Theory of Strict Liability," The Journal of Legal Studies, vol. 3, no. 1, pp. 151–204, 1974, doi:10.1086/467495
15. B. Anggoro, Hukum Keimigrasian: Suatu Pengantar, Depok: Rajagrafindo Persada, 2022.
16. D. Shaffmeister, J. Keijzer, and P. H. Sitorus, Hukum Pidana, Yogyakarta: Liberty, 1995.
17. T. Salman and A. Budhiartie, "Analisis Konsep Keadilan dalam Pandangan Filsafat Hukum Aristoteles dan Relevansinya di Indonesia," Jurnal Filsafat Hukum, vol. 4, no. 2, 2024.
18. R. Erliyani, "Putusan Hakim yang Bersifat Ultra Petita dalam Perkara Pidana," Jurnal Kolaboratif Sains, vol. 8, no. 7, pp. 4482–4492, 2025, doi:10.56338/jks.v8i7.7968
19. Monalisty, D. Rizky, H. Wijayat, and R. Susmayani, "Analisis Yuridis Sanksi Deportasi dalam Hukum Keimigrasian di Indonesia," Master's Thesis, Universitas Brawijaya, Malang, 2025. [Online]. Available: <http://repository.ub.ac.id/id/eprint/236839>
20. S. E. Sterk, "Strict Liability and Negligence in Property Theory," The Journal of Legal Studies, vol. 14, no. 2, pp. 263–296, 1985. [Online]. Available: <https://www.jstor.org/stable/41511329>
21. D. Dinanti and Y. Yuli, "Perlindungan Hukum atas Hak-Hak Tersangka pada Proses Penyidikan Perkara Pidana dalam Perspektif Hak Asasi Manusia," Jurnal Yuridis, vol. 3, no. 2, pp. 1–10, 2016, doi:10.35586/jy.v3i2.181
22. R. Handoko, Terminologi Hukum, Jakarta: Sinar Grafika, 1996.
23. P. S. Saraswati, "Perlindungan Hak Tersangka dan Terdakwa: Penegakan Prinsip Fair Trial dalam Sistem Peradilan Pidana," Jurnal Hukum dan Hak Asasi Manusia, vol. 7, no. 2, pp. 2715–2758, 2023, doi:10.36733/jhshs.v7i02.12707