

Towards Advanced Tourism Development in Indonesia: A Critical Review of Visa-Free Policy

Menuju Pembangunan Pariwisata Indonesia yang Berkualitas: Tinjauan Kritis terhadap Kebijakan Bebas Visa

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Received: March 8, 2023 | Revised: December 18, 2023 | Published: June 30, 2024

Abstrak: Pada 2016, Pemerintah Indonesia menginisiasi kebijakan bebas visa bagi 169 negara untuk meningkatkan jumlah kunjungan wisatawan asing secara signifikan. Namun, pada 2018, parlemen merekomendasikan peninjauan kembali kebijakan tersebut. Hal ini mengingat potensi tindak pidana, baik kejahatan maupun pelanggaran, yang dilakukan oleh penerima bebas visa serta dampak signifikan terhadap penurunan pendapatan negara. Melalui pendekatan kualitatif, yang mencakup studi literatur dan analisis dokumen hukum, studi ini bertujuan untuk memberikan solusi alternatif terhadap kebijakan bebas visa di Indonesia. Studi ini menemukan bahwa (1) prinsip-prinsip utama dari kebijakan bebas visa di Indonesia adalah resiprokalitas dan prinsip manfaat; (2) kebijakan ini juga kurang didukung oleh justifikasi yang memadai dari negara-negara penerima, dan belum ada bukti empiris yang konklusif tentang dampak positif kebijakan tersebut terhadap peningkatan jumlah wisatawan asing ke Indonesia; (3) oleh karena itu, perlu penyempurnaan norma hukum terutama dalam peraturan keimigrasian untuk memastikan tujuan pemerintah selaras dengan prinsip-prinsip keamanan dan proteksi teritorial. Pembuat kebijakan perlu untuk mempertimbangkan penyesuaian Undang-Undang Keimigrasian agar harmonis dengan kebijakan bebas visa, demi mencapai tujuan strategis nasional tanpa mengesampingkan aspek keamanan dan kedaulatan negara.



Kata Kunci: kebijakan bebas visa; pemerintah Indonesia; wisatawan mancanegara

Abstract: In 2016, the Indonesian Government initiated a visa-free policy for 169 countries to significantly increase the number of foreign tourists visiting. However, in 2018, parliament recommended a review of the policy. This is considering the potential of criminal acts, both crimes and violations, by visa-free recipients and a significant impact on the decline in state revenue. Through a qualitative approach, which includes a literature review and legal document analysis, this study aims to provide alternative solutions to the visa-free policy in Indonesia. The study found that (1) the main principles of Indonesia's visa-free policy are reciprocity and the benefit principle; (2) this policy is also not supported by adequate justification from the recipient countries, and there is no conclusive empirical evidence of the positive impact of the policy on the number of foreign tourist to Indonesia; (3) therefore, need for refinement legal norm, especially immigration regulations, to ensure that government objectives are aligned with the principles of territorial security and national protection principles. Policymakers must consider adjusting the Immigration Law to be in harmony with the visa-free policy to achieve national strategic goals without overriding the security and sovereignty aspect of the country.

Keywords: foreign tourist; government of Indonesia; visa-free policy

Introduction

Tourism has been considered the largest industry in the world (Goeldner & Ritchie, 2009; Hudman & Hawkins, 1989). Before the COVID-19 pandemic, the United Nations World Tourism Organization (UNWTO) reported international tourist arrivals had reached 1.46 billion, contributing USD1.481 trillion in global revenue (UNWTO, 2020). Since 2014, tourism has been a strategic priority in the Indonesian Government's development agenda, with the primary of increasing tourist arrivals by up to 20 million by the end of 2019 ("Jokowi: All Ministries," 2015). A pivotal policy initiative introduced by the government was the implementation of visa-free select countries, acknowledging the significant impact of regulation on international tourism (Peers et al., 2012).

In this context, the Government of Indonesia (GoI) promulgated Presidential Regulation Number 21 of 2016 on Visa-Free Visit (Visa-Free Presidential Regulation), extending visa-free privileges to 169 countries. This marked a significant expansion from earlier provision under Presidential Regulation Number 43 of 2011 on the Third Amendment to Presidential Regulation Number 69 of 2015 on Visa-Free Visits (Presidential Regulation Visa-Free 2015). The Presidential Regulation Visa-Free 2015 significantly expanded visa-free entry from only 30 countries to include travelers from 13 additional countries and two special administrative regions for various, including governmental, educational, cultural, tourism, business, family, journalism, and transit. The Visa-Free Presidential Regulation was designed to enhance the influx of foreign tourists' by obviating the requirement for individuals from 169 countries to obtain or incur any visa application fees for entry into Indonesia. However, this policy may also lead to a substantial increase in operational cost and the requisite number of immigration staff required for monitoring and control.

The House of Representatives (DPR RI) initiated a policy on January 16, 2018, in response to concern over an uptick in illegal activities by foreigners exploiting the visa-free entry program. Subsequent inter-ministerial and inter-government agencies dialogues led to a consensus on curtailing the list of countries eligible for visa-free

entry. This is aligning with the government's strategic pivot towards enhancing quality tourism. However, the specifics regarding the number and identify of countries to be excluded from the visa-free privilege remain undetermined.

On March 31, 2020, the GoI enacted Government Regulation Number 1 of 2020, imposing Large-Scale Social Restrictions to expedite COVID-19 containment efforts. This measure effectively suspended the visa-free policy, invoking Article 6 of the Visa-Free Presidential Regulation to safeguard public health. The emergency status was formally lifted on June 22, 2023, via Presidential Decree Number 17 of 2023. Despite the suspension of the visa-free policy during the COVID-19 pandemic, Indonesia's tourism sector witnessed a resilient performance, with foreign tourist visits to Indonesia still reaching 1.56 million in 2021 and increased significantly to almost 5.9 million in 2022 (Kemenparekraf/Baparekraf, 2022, 2023).

A comprehensive study is necessary given the short evaluation period since the policy's implementation. It is crucial to understand the negative impacts of the visa-free policy and to develop justifications for adjusting the number of eligible countries. This research aims to provide insights for policymakers, focusing on three questions: (1) what are the principles of Indonesia's visa-free policy? (2) what is the potential impact of the policy?; and (3) what are effective solutions for the policy?

The orientation of this research is not a traditional but a mainstream and interpretive policy analysis. It does not explain the scientific foundations regarding the policy justification for granting visa-free to 169 countries (traditional orientation). Yet, it focuses on the values upheld by stakeholders in the bureaucratic environment related to the pros and cons of the visa-free policy. In addition, this paper describes their perceptions of the visa-free policy (Browne et al., 2019).

This research uses a qualitative methodology to understand the meaning behind the visible data (Sugiyono, 2007), adhering to a normative legal research framework. A normative legal research approach prioritizes the analysis of secondary data, including scholarly examinations of primary legal materials, such as statutes, jurisprudence, and international treaties, as well as secondary legal materials like books, journals, and research reports (Muhaimin, 2020; Nasution, 2008; Purwati, 2020). The normative legal research is employed to comprehend the synchronization between laws and regulations regarding visa-free policies (Salim & Nurbani, 2014) based on the different interpretations of the stakeholders on the essence of the governing laws and regulations. Thus, this study will seek the prevailing rules based on applicable legal norms, not the facts that cause different interpretations (Ali & Heryani, 2012).

This study delves into a comprehensive array of legal documents relevant to Indonesia, chiefly comprising the 1945 Constitution of the Republic of Indonesia, alongside pivotal immigration laws and regulations. Among these are the Law of the Republic of Indonesia Number 6 of 2011 on Immigration, Law Number 24 of 2003 on the Constitutional Court, and a series of presidential regulations and ministerial regulations that have significantly influenced the nation's visa policies.

Presidential Regulation Number 69 of 2015 on Visa-Free Visits (Presidential Regulation Visa-Free 2015) has been repealed and supplanted by Presidential Regulation Number 21 of 2016 on Visa-Free Visits (Visa-Free Presidential Regulation). Ministerial regulations such as Ministerial Regulation Number 50 of 2016 on the Foreigner Monitoring Team and Ministerial Regulation Number 17 of 2016 on Certain Immigration Checkpoints, Conditions, and Destinations of Arrival for Foreigners Obtaining Visa-Free Visits have played a pivotal role. However, the latter was nullified by Regulation Number 29 of 2021 on Visas and Residence Permits and subsequently replaced by

Regulation Number 22 of 2023 on Visas and Residence Permits (Ministerial Regulation on Visas and Residence Permits), which now delineates the current requirements for visas and residence permits for foreigners in Indonesia.

Despite the replacement of the Ministerial Regulation on Immigration Checkpoint, the original research findings remain pertinent. Additionally, legal policies in the form of Directorate General of Immigration Circular Letter Number IMI-0533.GR.01.01 of 2022 and Circular Letter Number IMI-0603.GR.01.01 of 2022 address the facilitation of immigration amidst the challenges posed by the COVID-19 pandemic, particularly in the Batam and Bintan areas, and during the 2019 Corona Virus Disease Pandemic, respectively. Together, these regulations constitute the legal framework governing the facilitation of sustainable tourism amidst the challenges posed by the COVID-19 pandemic, including the implementation of visa-free policies for select countries.

Data analysis is carried out by (1) identifying and collecting regulations related to the visa-free travel policy in Indonesia, (2) interpreting these regulations, and (3) drawing conclusions based on the results of normative legal analysis, resulting in a critical analysis of the visa-free travel policy in Indonesia. The study focuses on regulations active until 2019, along with their changes that became positive laws prior to the COVID-19 pandemic, which marked an era of rising tourist arrivals to Indonesia. Complementing the legal scrutiny, the research includes a comprehensive literature review of scientific publications, digital repositories, relevant digital libraries, government reports, and policy documents to provide a holistic understanding of the visa-free framework.

This study is policy research. It aims to produce recommendations for policy or alternative policy (Tohardi, 2020) in terms of visa-free by addressing the two main research inquiries, primarily, what is the potential impact of the visa-free policy on Indonesian tourism, and subsequently, how should the visa-free policy in Indonesia be implemented. The visa-free travel policy has implications for various aspects of people's lives towards national security, and it has the potential to produce violations. The findings of this research aim to assist the DPR RI and the government in evaluating the policy, particularly concerning the security and movement of foreigners, as well as state sovereignty in international relations. Ultimately, the results of this research intend to guide the DPR RI in formulating improved policy recommendations to the government and/or amending existing regulations to maximize benefits and minimize drawbacks associated with visa-free tourism policy.

In addition, this research was also based on the authors' involvement in some interministerial focus group discussions to evaluate the visa-free policy between 2018 and 2021. This involvement has provided valuable insights into the challenges of formulating such a policy and contributed to the development of a comprehensive framework for visa-free policy.

Visa Facilitation in Tourism

The ongoing debate about the advantages and disadvantages of implementing the visa-free policy in 169 countries, and some relevant quantitative data are available for analysis. The use of quantitative data for qualitative research can clarify the conditions and meaning of the research substance (Chivanga, 2016). Thus, we can weigh the advantages and disadvantages of policy enforcement. International law upholds the principle that every country is entitled to absolute sovereignty to control foreign entry and exit (Goto & Akai, 2017). The visa policy is one of the tools used to supervise and control foreigners. It is used widely by countries as a mechanism to prevent the

entry of unwanted individuals (Artal-tur et al., 2016) to conduct early checks on who enters their territory even before they arrive at the border (Czaika & Neumayer, 2017).

There are various reasons behind the visa policy, such as minimizing the entry of potential terrorists, illegal immigrants, and political asylum seekers, limiting tourist activities (not working in the destination countries), implementing a geostrategic role (granting visa-free to friendly countries and requiring those deemed “enemies”), and increasing governments’ revenues through visa fees (Bangwayo-Skeete & Skeete, 2016; Luedtke et al., 2010; Neumayer, 2010;). These reasons are related to the popularity of a country as a tourism destination, cultural and linguistic similarities, and whether or not citizens of a country would seek political asylum, become refugees, terrorists, or look for jobs in other countries (Bangwayo-Skeete & Skeete, 2016; Luedtke et al., 2010).

For developing countries, some experts recognize the potential of visa-free to boost tourism, which faces an estimated decline of 20 percent (Artal-tur et al., 2016) or 64 percent (Neumayer, 2010) in tourist visits without such policies. However, according to Artal-tur et al. (2016), this presupposition does not apply to developing countries that provide great business opportunities (examples: India, Vietnam, Singapore, and Malaysia) and which are world-famous tourist destinations (examples: Thailand, Nepal, and the Maldives). It might be true; for instance, Thailand “only” grants visa-free to 64 countries, and the number of foreign tourists visiting the country in 2019 has reached 40 million and foreign exchange earnings of USD62 billion (National Statistics Office of Thailand, 2023). This achievement makes Thailand one of the top 10 world’s best tourist destinations regarding the number of foreign tourists arriving (UN World Tourism Organization, 2020).

Felipe González Abad emphasizes that enhancing destination attractiveness drives tourism: “The most effective and efficient way to solve the problem of connectivity would always be to generate and develop the demand by incorporating attractiveness to destinations: no one doubts why tourists fly to New York, London, Paris or Madrid” (Antariksa, 2022). It is compelling to notice widely spread information about the average maximum distance traveled. Around 80 percent of foreign tourists only travel as far as 1,000 km from their countries of residence. Meanwhile, another expert stated that 77 percent of foreign tourists generally travel no more than 4,000 km (McKercher, 2018; Verma et al., 2019). Thus, the visa-free policy is only one of the many factors determining the increase in foreign tourists. The information also shows a country’s difficulty in increasing the number of foreign tourists.

Nevertheless, relevant stakeholders’ support for the visa-free policy will always remain for several reasons. First, foreign tourists are a great source of profit for the tourism industry. Second, for owners of multinational companies, the policy will facilitate the traffic of workers, business partners, and consumers from various countries. Third, for immigrant communities, the policy will ease the visiting family and friends from their countries of origin (Bangwayo-Skeete & Skeete, 2016).

According to UNWTO, the ultimate goal of a tourism policy should be the well-being of residents living around tourist destinations (Mak, 2008). The main characteristic of tourist destinations is that they are not “paradise” but places where residents live and conduct their daily activities. Hence, the tourism development policy is not solely for economic growth (Antariksa, 2016). Security issues, for example, are also of interest to the tourism sector as “violence is anathema to tourism” (de Cuéllar, 1996). Besides, –unfortunately and unintentionally– tourism can also be used for activities, such as spying, that might irritate national security. During the 1990s, the Federal Bureau of Investigation (FBI) reported such cases in the U.S. (Knight, 1996).

In the domain tourism law, visa and visa-free frameworks are essential component of the regulatory spectrum governing travel-related activities. Tourism law encompasses a broad array of statutes and regulations related to various travel activities, including aerial transport, licensing systems, cultural heritage, environmental protection, consumer rights, and competitive business practices (Antariksa, 2016). Consequently, the norms regulated in the applicable laws and regulations will influence policy enforcement.

When tourism is designated as a focal point within development policy frameworks, it becomes imperative to achieve a heightened degree of policy synchronization across various governmental ministries and agencies. This includes the implementation of visa-free policies, given that the tourism sector is inherently more multidisciplinary compared to others. Therefore, policymakers should pay due attention to the following:

“Understanding both positive and negative impacts will lead to practice sustainable tourism development... therefore, it is important to have an integrated policy. Without a comprehensive tourism policy, tourism’s economic, political, and legal implications often have unguided results, which may not lead to high-quality tourism development” (Edgell & Swanson, 2013).

The current observation is essential as in 2013, the government envisioned a tourism development policy toward quality tourism. The government uses the term “quality tourism” to attract more tourists who can spend more money on a tourist destination (Ashdiana, 2013; Kustiani, 2019). Meanwhile, some experts translated it as a quality service of the tourism industry for tourists and explained the urgency that “...quality tourism has become one of the future global tourism policy issues in the light of the rapid growth of the tourism industry...” (Tîţu et al., 2016). However, in the first period of President Jokowi’s administration (2014–2019), the policy changed towards increasing the number of foreign tourists as much as possible (Waluyo, 2017). Only in the second period of Jokowi’s administration was the same concept, as expressed in 2013, revived (Kustiani, 2019).

This paper will not discuss the concept of quality tourism in detail. However, immediately, the term is not merely related to quality services for tourists but also to environmental conservation, quality of life, the relationship between tourists and residents, sustainability, etcetera (Jennings et al., 2009; Sørensen & Grindsted, 2021). Accordingly, whether we like it or not, limiting the number of tourists can be one aspect of quality tourism implementation.

Several issues have arisen concerning the visa-free policy, requiring foreign nationals to obtain visas, which enables early threat mitigation through Indonesian embassies (Baqi, 2018). Other researchers stated the problem lies in the lack of number and competence of immigration officers in modern intelligence, facilities, and infrastructure, and the low quality of coordination between ministries/agencies (because, among others, the selfishness of the stakeholders concerned) (Jazuli, 2016; Nugroho, 2017). The other issues disclosed are the increasing number of illegal foreign workers (Setiadi & Afrizal, 2019) and human trafficking (Baqi, 2018).

Research on visa-free policy implications on tourism shows that merely granting visa-free facilities to other countries will not significantly attract tourists. Other aspects also influence the increase in the number of tourist visits. Besides, this research does not tell us exactly how many countries should be granted visa-free facilities to ensure a huge increase in tourist numbers and how to choose the right countries to receive such a facility. This fact makes it relatively difficult for policymak-

ers to decide on the right policy to maximize the positive impacts and minimize the negative ones.

The Principles of Visa-Free Policy in Indonesia

Indonesia's visa-free policy is based on the principles of benefit and reciprocity as stipulated in Article 2, paragraph (1) of the Visa-Free Presidential Regulation). This is in line with the provisions of Law Number 6 of 2011 on Immigration (Immigration Law), especially Article 43, paragraph (2) letter a regarding the requirement for foreigners who can be exempted from the obligation to have a visa. However, based on Article 6 of the Visa-Free Presidential Regulation, the visa-free policy can be provisionally halted in response to certain state security and public health circumstances. These regulations suggest that the GoI harbors the intention of permanently rescinding the visa-free privilege extended to 169 countries (Ardhiwisastra, 2012).

Based on Indonesian immigration law, Article 10 of the Immigration Law and Article 6 of the Visa-Free Presidential Regulation serve complementary yet distinct functions. Article 10 outlines the entry procedures for foreigners requiring an entry certificate, while Article 6 empowers the Minister to suspend visa-free visits under specific circumstances concerning state security and public health. It is related to the legal principle of the legal system in Indonesia. The Visa-Free Presidential Regulation, as a more specific law, can override the general provisions of the Immigration Law based on the principle of *lex specialist derogat legi generalist*. However, the "*lex superior derogat legi inferiori*" allows Article 10 of the Immigration Law to potentially override Article 6 of the Visa-Free Presidential Regulation (Irfani, 2020). Based on this principle, the higher-level Immigration Law could take precedence over the Visa-Free Presidential Regulation, but is important to review the specific provisions of both Article 10 of the Immigration Law and Article 6 of the Visa-Free Presidential Regulation to determine the nature conflict and apply the principle accordingly. This ensures that the legal system maintains consistency and coherence, with the superior law guiding the interpretation and applications of the inferior law in the Indonesian immigration law.

Furthermore, the Immigration Law empowers immigration officials to deny entry based on various conditions, such as being on the name on the deterrence list, lacking a valid travel document, committing immigration fraud, suffering from an infectious disease that endangers public health, engaging in international crimes and transnational crimes, being blacklisted, involving in treasons against the GoI, or engaging in organized prostitution crime, human trafficking, and smuggling. The criteria for entry denial to Indonesia include treason against the GoI or involvement in crimes such as prostitution, human trafficking, and smuggling. This applies to all individuals, including those who are visa-exempt, unless they are specifically exempt from the visa requirement.

The immigration law mandates strict conditions for entry denial for foreigners and rules regarding specific visa eligibility criteria. According to Article 101 paragraph (1) letter (b) of Government Regulation Number 31 of 2013 on Implementing Regulations of Immigration Law as last amended by Government Regulation Number 40 of 2023, foreigners to be eligible for visa on arrival or visa exemption in Indonesia is the possession of a return or onward travel ticket to another country. These requirements serve as safeguards to ensure that visitors have the means to leave the country, which is in line with the government's efforts to regulate immigration and maintain security.

Building on the stringent entry conditions and visa regulations, the Directorate General of Immigration (DGI) has strengthened its immigration oversight by devel-

oping a digital platform and establishing dedicated teams to monitor foreign visitors, ensuring a seamless integration of legal mandates with advanced surveillance capabilities. The digital platform enhances surveillance effectiveness for temporary visiting foreigners and streamlines the reporting process across various accommodations in Indonesia. This is accessible at <http://apoa.imigrasi.go.id>, for stakeholders such as hotels, apartments, corporate resorts, and companies' messes. The government has also formed 613 teams to observe foreign visitors and increase surveillance in 529 districts/cities throughout Indonesia (Nugroho, 2017).

The foreigner observation team was established at multiple government levels, from national to sub-national levels, and was comprised of representatives from various relevant ministries and government agencies under the coordination of the DGI (Indrady, 2020; Nugroho, 2017). The formation of this team have a legal basis in the Regulation of the Minister of Law and Human Rights Number 50 of 2016 on the Foreigner Observation Team. The legal framework also facilitates the systematic monitoring of foreign nationals. In addition, DGI is mandated to implement a comprehensive foreign data collection system, requiring foreigners to fill out an online pre-registration form before arriving in Indonesia and ensuring an efficient data collection process (Antariksa et al., 2018). So, involving multiple government agencies ensures a comprehensive approach to immigration oversight. Additionally, the pre-registration requirement bolsters the DGI's capacity for efficient management and analysis of foreign visitor data.

While DGI has enhanced its oversight capabilities through technological advancement and team-based strategies, the categories for visa-free entry continue to inform current practice, which was previously detailed under Article 3 of the Ministerial Regulation on Immigration Checkpoints, which has now been revoked and no longer applicable. Although the ministerial regulation has been revoked, the original research findings remain valid because the research was conducted before the regulatory change occurred. The Ministerial Regulation on Immigration Checkpoints delineates a broad spectrum of activities for which visa-free entry can be granted, transcending the traditional confines of tourism. This encompasses family visits, social engagements, artistic and cultural participation, government-related duties, educational activities such as delivering lectures or attending seminars, involvement in international exhibitions, business meetings at head office or representative offices in Indonesia, and transit. Notably, the 'visiting friends and relatives' (VFR) category includes family visits, while the 'meetings, incentives, conventions, and exhibitions' (MICE) category covers participation in international exhibitions. The comprehensive category under this regulation necessitates rigorous supervision to ensure that individuals visiting Indonesia, regardless of their purpose, comply with the nation's immigration policies. The vigilance supports the overarching goals of national security and public order, reflecting a holistic approach to visa issuance that embraces a wide range of international engagements.

Since its initial enactment, the Visa-Free Presidential Regulation has been a subject of intense debate among stakeholders, especially within the relevant ministries and government agencies. Proponents argue that the regulation will boost tourists and generate substantial revenue from the visits and foreign exchange, while opponents point to a potential loss of non-tax state revenue estimated at IDR1.6 trillion. Later on, additional reasons were mentioned that foreigners would possibly commit various crimes and violations granted visa-free, ranging from terrorism, separatism, money laundering, human smuggling, drugs, and weapons smuggling to those related to

nuclear material (Kemenkopolkam, 2018). Even in a focus group discussion, a high-rank official loudly expressed that no ministries and agencies agreed on the visa-free policy for 169 countries but the Ministry of Tourism and Creative Economy (MoTCE). However, some issues still need to be scrutinized, and evaluating the visa-free policy issue becomes more complicated and less focused.

The ongoing discourse on Visa-Free Presidential Regulation continues to engage stakeholders in evaluating its potential economic benefits against the associated risk. Simultaneously, the legal framework presents different challenges, especially in terms of compliance with existing Immigration Laws and reciprocity principles. It has been stipulated explicitly in Article 43, paragraph (2) letter (a) of the Immigration Law that visa exemption is granted to citizens of certain countries determined based on presidential regulation by considering the principle of reciprocity and benefit. Meanwhile, the explanation of these provisions stipulates that the visa exemption is granted only to foreigners from countries that also provide visa exemptions to Indonesian citizens.

The Visa-Free Presidential Regulation issued through the presidential regulation seems to have the potential to contradict the hierarchy of laws and regulations, particularly the Immigration Law. This regulation provides visa-free facilities to 169 countries. Meanwhile, the GoI shall only grant a visa-free/visa on arrival/e-visa to 72 countries that have reciprocated visa-free/visa on arrival/e-visa to Indonesia, based on data from the Henley Passport Index source from the International Air Transport Association (IATA) (Appendix I). The number of countries may decrease because these countries must also fulfill other requirements to provide benefits to Indonesia. As a result, the Visa-Free Presidential Regulation could be considered null and void because it contradicts the Immigration Law if the visa-free recipient country does not fulfill the conditions determined based on the principles of reciprocity and benefit.

In Indonesian law, the validity of the presidential regulation can be questioned if it contradicts a higher hierarchy of laws and regulations. However, determining a presidential regulation to be null and void due to a conflict with the law is a complex issue and requires examination by the authorized institutions. There is a legal opinion that regulations conflicting with superior laws may remain effective unless annulled by the Constitutional Court, which has the function of reviewing and making decisions about these matters (Shietra, 2019). However, the authority of the Constitutional Court is not to conduct a judicial review of the presidential regulation with the law but to conduct a judicial review of the law with The 1945 Constitution of the Republic of Indonesia. This is based on Article 10, paragraph (1) letter a of Law Number 24 of 2003 on the Constitutional Court, which describes the jurisdiction of the Court. Contrastingly, the authority to conduct a judicial review of laws and regulations under the law lies with the Supreme Court, as delineated in Article 24A paragraph (1) of the Constitution of the Republic of Indonesia in 1945. Consequently, any formal determination regarding the legitimacy of a presidential regulation must be sought through the established legal mechanism of judicial review by the Supreme Court.

Assessing the economic impact of regulatory policies requires a detailed examination to ensure their effectiveness and alignment with national objectives. The visa-free policy is a prime example of this, as it is strategically to boost tourism and foreign exchange reserves by selecting countries based on a range of economic criteria. The ultimate goal of this policy is to encourage a significant increase in the number of foreign tourists arriving in the country, which is expected to have a positive impact on the country's foreign exchanges reserves, thereby strengthening the overall economy. The process for determining a country eligibility for visa-free requires a more detailed

and comprehensive explanation. A clearer justification is essential for selecting countries that qualify for the visa-free policy, ensuring that the criteria are transparent, and the policy's intention is well-defined. Notably, Burundi has the second-highest poverty rate globally admitted by the International Monetary Fund [IMF] (2021). Meanwhile, South Africa has the highest unemployment rate in the world reported by World Population Review (2022). Both are include the list of countries eligible for the visa-free policy. Based on data published by the IMF in 2021, there are only 109 countries that get visa-free and have a higher per-capita income than Indonesia. This indicates that the selection criteria for visa-free policy need to be more transparent to ensure the achievement of expected economic benefit (Appendix II; IMF, 2021).

The visa-free policy's selection criteria must be transparent to achieve the intended economic benefit. It is also important to consider factors beyond per capita income, such as democracy levels and tourism spending, which can influence the policy's effectiveness. The assessment biases may arise when indicator other than income per capita are use to determine eligibility for visa-free access. For instance, the United Arab Emirates and Saudi Arabia are ranked in the top 50 countries with the highest per capita income globally despite lower levels of democracy (IMF, 2021). Another example, China is the most populous country in the world, also leading in global tourism spending, with a record USD255 billion in 2019 (UN World Tourism Organization, 2020). In the same year, Chinese tourists were one of the largest group of visitor to Indonesia, accounting for 2.07 million arrivals, second only to Malaysia, with an average expenditure of USD1,114 per visit (Badan Pusat Statistik, 2020, 2021). This number of China tourists contributes significantly to Indonesia foreign exchange earning due to the overall volume.

When evaluating the economic impact of visa-free policies for foreign tourists, it is essential to understand that the country's size does not necessarily determine its wealth, as evidenced by smaller nations that enjoy high income per capita. This calls for a careful analysis of each country's unique economic standing. For instance, Luxembourg's small population of 636,364 negates its status as a small a country with the highest per capita income worldwide. This highlights the need for nuanced policy evaluations, as not all economic indicators are universally applicable to all countries. It means that the government needs to consider several exceptions. For example, Cambodia is a member of the Association of Southeast Asian Nations (ASEAN), and among the 50 poorest countries in the world. This is the same with Suriname's historical relationship with Indonesia which has strong historical ties and survived although there was an economic gap and Suriname had a lower income per capita than Indonesia. Furthermore, the economic landscape of Croatia, Spain, and Greece illustrate that high unemployment rates can coexist with high per capita incomes. They emerged in the top 50 for unemployment and enjoyed ranking among the top 50 globally for per capita income (Badan Pusat Statistik, 2020, 2021).

The Potential Impact of the Free-Visa Policy

For those against the visa-free policy, there should be a reduction in the number of countries granted visa-free. They perceive that the policy brings about an increase in crimes and violations. Unfortunately, convincing statistical data to support their concern remains rare, making it difficult to assess the extent of the national loss due to the policy.

Several studies found that many violations against the law occurred due to visa-free utilization. However, there needs to be a clear explanation of the number of viola-

tions, the extent of the loss compared to the previous conditions, and other comparative indicators to measure the violation's scale and threat to the national interest.

It is relatively easy to measure such loss on a quantitative basis. An illustration shows how to measure a loss from violations committed by foreigners. For instance, despite the 9/11 terrorist attacks by ten people, the impact on material and the number of victims was severe (Parker Waichman LLP, 2020). Besides, the value of financial losses for all terrorist attacks (World Trade Center Building, Pentagon, and Pennsylvania) is around USD43.6 billion (based on dollar value in 2015) (Heft, 2016).

Another concern is that the visa-free policy allows foreigners to no longer report to the Indonesian embassy in their country of residence, which may reduce the accuracy of information about the personal data of foreigners who want to visit Indonesia (Antariksa et al., 2018). However, to minimize the impact, increasing coordination between relevant ministries/government agencies and strengthening cooperation networks in law enforcement at the international level, such as Interpol and etcetera, is vital.

Considering the 2019 World Economic Forum (WEF) report, the performance of visa-related policies is in the international openness pillar and the visa requirement indicator. The indicator refers to the Visa Openness Report published by UNWTO. Overall, on global tourism competitiveness, Indonesia is ranked 40 out of 140 countries, where the international openness pillar is ranked 16th, and the visa requirement indicator is ranked third (Calderwood & Soshkin, 2019). The 2013 Visa Openness Report shows that Indonesia's level of openness is in the 40–69 percent range. In 2018, the Indonesian visa openness index was in the 80–98 percent range, which means that Indonesia is among the ten most open countries in the world, including Dominica, Haiti, Ecuador, St. Kitts and Nevis, Qatar, and Mauritius in the same score, and Cook Islands, Micronesia, and Niue which are at 100 percent (UNWTO, 2018).

The 2019 World Travel and Tourism Council (WTTC) report, referring to data between 2012–2017 and estimated data from 2018, claims that the visa-free policy has effectively resulted in an increase in foreign tourist arrivals on a global scale by 24 percent or an average of eight percent per year during the 2016–2018 period (WTTC, 2019). Reviewing the statistics of foreign tourists' arrival to Indonesia from 2010 to 2014, before the implementation of the visa-free policy for 169 countries, the annual average growth reached 7.74 percent. Then, from 2015 to 2019, a 12.02 percent average growth was recorded, which means an increase of 4.28 percent compared to that before the policy enforcement (Badan Pusat Statistik, 2020).

However, it is essential to note that the surge in the number of foreign tourists results from changes in the methodology with mobile positioning data (MPD), which began in October 2016 (Badan Pusat Statistik, 2017). This method also records arrival through borders between countries, which was not recorded previously, so a study of its impact is required to describe the actual implications of the visa-free policy on foreign tourists visiting Indonesia.

Based on statistical data, the number of violations foreigners commit is insignificant. For instance, violations committed by Chinese tourists, based on data from the DGI, in 2016–2017, the violation ratio committed by Chinese tourists compared to the number of Chinese tourists visiting Indonesia is only 0.14 percent and 0.1 percent, respectively (Direktorat Jenderal Imigrasi Kementerian Keuangan, 2021). In addition, the number of violations committed by Chinese tourists and resolved through the judicial process from 2016–2019 significantly decreased from 126 to 39 cases (Ditjen Imigrasi, 2021).

Since the implementation of the Visa-Free Presidential Regulation on March 10, 2016, the anticipated surge in foreign tourist numbers has not materialized, despite the policy's expansion to include 169 countries, a more than 1,000 percent increase from initial 15. The target for foreign tourist arrivals between 2016 and 2019 failed to achieve and contrary to expectations, the average amount of foreign tourists spending per visit has decreased. Notably, there was a marginal increase of USD1.02 in daily spending by foreign tourist in 2016, from USD141.65 to USD142.67, this is reversed by 2019, with average daily spending dropping to USD129.21 from USD141.17 in 2018 (Badan Pusat Statistik, 2021). Thus, the hypothesis made by some government officials that the visa-free policy has led to a drastic increase in the number of foreign tourists and the presumption has resulted in a surge of problems in the country has yet to be clearly proven.

The revocation of Indonesia's visa-free policy could lead to unintended consequences, such as diminished support from other countries in international forums where Indonesia seeks to advance specific interests. This is potential issue, while seemingly peripheral, warrants careful consideration due to its possible long term implications for Indonesia's strategic objectives, especially in the tourism sector. The government's response to countries that do not significantly contribute to foreign tourists numbers yet do not present issues remains a pertinent question.

Moreover, the lack of precise quantitative data on infractions related to the visa-free policy hinders the government's ability to substantiate the policy's adverse effects. The negligible increase in tourist arrivals post-policy implementation suggests that visa-free policy alone does not suffice to boost tourism. This aligns with Bank Indonesia's findings which recommend enhancing the quality of tourist destinations (2018). Furthermore, any observed uptick in immigration law violations by foreign tourists can not directly attributed to the visa-free policy, indicating that other factors may be at play.

The Effective Solutions for a Visa-Free Policy in Indonesia

The recent analysis indicates that determining the optimal timing for granting or revoking visa-free access to a country is a complex task. A methodical and legally accountable approach to refining the list of countries eligible for visa-free entry involves a multifaceted assessment. The Indonesian government should meticulously evaluate the 72 countries currently enjoying visa-free/visa on arrival (VoA)/e-visa privileges based on several criteria, such as the volume and expenditure of foreign tourists sent to Indonesia, the per capita income, the minimal security risk, and the healthcare standard. Countries that show strong performance across these dimensions can be considered suitable candidates for visa-free status.

The process of granting or revoking visa-free access requires a thorough evaluation of various factors, including per capita income and security risks. This assessment is vital for the Indonesian government to refine and filter the list of 72 countries currently granted visa-free rights. In addition, the potential to amend Article 43 paragraph (2) of the Immigration Law could expand eligibility criteria, potentially increasing the number of countries with visa-free access, especially those with higher per capita incomes than Indonesia. However, this expansion must be carefully balanced against the need for exemptions due to historical ties, geographical proximity, and national security concerns, which may influence the final selection of countries deemed suitable for visa-free status.

The proposed amendment of the provisions of Article 43 paragraph (2) of the Immigration Law, which would replace “and” with “or” between the principle of reciprocity and benefit, could increase the number of eligible countries. While the primary focus is on granting visa-free access to 109 countries with higher per capita incomes than Indonesia, exceptions should be considered for ASEAN member countries, like Cambodia, Laos, Myanmar, and Vietnam, which have lower per capita incomes. Suriname’s strong historical ties with Indonesia also warrant consideration, as such connections can motivate travel, according to Goeldner and Ritchie (Antariksa, 2016). Additionally, neighboring countries with lower per capita income, except Brunei Darussalam and Malaysia, such as Timor Leste and Papua New Guinea. However, some countries must be evaluated alongside countries, such as Aruba, Equatorial Guinea, Iraq, Israel, Colombia, Kosovo, and Montenegro, which, despite higher per capita incomes, are not granted visa-free access. Considering all factors, the maximum number of countries eligible for visa-free is 115. However, the number may need to be adjusted given the national security concerns associated with countries such as Israel and Iraq.

In harmony with the proposed amendment to Article 43 paragraph (2) of the Immigration Law with Indonesia’s Health-Centric Policy, it is imperative to assess the potential outcomes of each policy directive. In this regard, the government’s prudent approach to health protection which requires a careful balance between encouraging economic incentives and enforcing public health measures. The Indonesian government’s approach to visa-free during the COVID-19 pandemic exemplifies a balanced strategy, as it selectively applies immigration policies to align with public health objectives. This is evident in the issuance of the Director General of Immigration’s Circular Letter Number IMI-0533.GR.01.01 of 2022 on Facilitation of Immigration to Support Sustainable Tourism in Batam and Bintan Regions during the 2019 Corona Virus Disease Pandemic (Circular Letter Immigration Facility). Based on the Circular Letter Immigration Facility, the GoI directive, which seeks to increase sustainable tourism in certain regions, reflects a dedication to regional cooperation through the reactivation of visa-free policies for ASEAN member states, and despite the varying healthcare standards within the bloc. The quality of health services in each country varies greatly, ranging from Singapore’s high ranking at 15th to Myanmar’s placement at a lower ranking than Singapore, which is ranked 127th out of 167 countries (World Population Review, 2021). However, this initiative is tempered by a commitment to public health, suggesting a limitation of visa-free entry to only 56 countries that boast healthcare systems superior to Indonesia, highlighting the necessity for adaptable policies in response to the changing health landscape both regionally and globally.

The GoI is enhancing its immigration policy by implementing Visa on Arrival (VoA) for several countries to bolster tourism. As per the Director General of Immigration’s Circular Letter Number IMI-0603.GR.01.01 of 2022 on Immigration Facility to Support Sustainable Tourism during the Corona Virus Disease 2019 Pandemic (Circular Letter National Immigration Facility), these measures support sustainable tourism during the COVID-19 pandemic. The VoA eligibility primarily hinges on economic indicators, such as the per capita income of potential visitors countries. Many countries are eligible for visa-free with an amount of per capita income. While ASEAN members Singapore and countries like Australia, the United States, Denmark, Ireland, Luxembourg, Norway, Qatar, and Switzerland were recognized for their high per capita incomes, placing them in the top ten globally in 2021. Conversely, Iceland’s ranking at sixth and Puerto Rico’s ranking at 30th, despite their high per capita income rankings, are not included

in the VoA program (IMF, 2021). It is indicating a selective approach to visa facilitation that considers various criteria beyond economic standings.

The Indonesia VoA program is primarily influenced by economic factors, such as per capita income, but also considers additional criteria that affect the selection of eligible countries. The Circular Letter National Immigration Facility outlines that all ASEAN member countries qualify for visa-free (page 5-point d) and VoA privileges (page 6, point g), which introduced potential interpretative ambiguities in interpreting these provisions due to overlapping criteria in a legal policy. This duality in eligibility criteria necessitates a clear distinction to avoid confusion. Furthermore, the health service quality of some countries granted VoA including Kuwait ranking at 58th, Peru ranking at 61st, Argentina ranking at 63rd, Brazil ranking at 70th, and Russia ranking at 76th is ranked lower than Indonesia which stands at 57th but is not mentioned in ASEAN member countries (World Population Review, 2021). Despite these discrepancies, the current legal framework for issuing VoA is considered more compliant with the principle of reciprocity and benefit as mandated by the Immigration Law, compared to the pre-pandemic visa-free policy. Therefore, the legal language must be used in immigration policies to be precise and coherent to ensure stakeholders can interpret and implement the rules effectively.

The Indonesia VoA policy, adapted to the post-pandemic economic and health-care landscape offers a more compliant immigration approach than the previous visa-free policy. Governed by the Immigration Law reciprocity and economic benefit mandates, the GoI can grant visa-free access to a select group of up to 72 countries that provide reciprocal advantages and contribute economically. While the VoA policy's lack of reciprocity requirements broadens its applicability, its effectiveness in mitigating immigration violations hinges on enhanced monitoring and enforcement. The GoI has the authority to amend the Immigration Law to better align with strategic and legal objectives, but until such amendments are made, it must adhere to existing provisions. The flexibility of the VoA policy does not ensure a decrease in immigration infractions, underscoring the necessity for improvements in the monitoring system and law enforcement.

Conclusion

In conclusion, this paper addresses the principles, potential impacts, and effective solutions for the visa-free policy in Indonesia. Firstly, the principles underlying Indonesia's visa-free policy include reciprocity and the benefit principle, which are designed to facilitate international travel and tourism while ensuring national security and compliance with immigration laws.

Secondly, regarding the potential impact of the visa-free policy, current data shows that both the positive and negative effects are minimal. Since the policy's implementation, the number of violation cases and the increase in tourist visits to Indonesia are insignificant. Further research is essential to comprehensively understand the policy's impact on various aspects, such as common violations and the countries of origin of offenders.

Lastly, to ensure the effectiveness of the visa-free policy, the Government of Indonesia (GoI) should consider revising the Immigration Law. A more flexible interpretation of the law, by replacing the conjunction "and" with "or" between the terms "reciprocity" and "benefit principle," would allow for more practical policy adjustments. Without such amendments, enforcing alternative policies remains challenging due to

the current conflict between the Visa-Free Presidential Regulation and the Immigration Law.

In light of these findings, the GoI should consider revising the policy to align with the requirements of the Immigration Law. The government could provide a stronger justification for reducing the number of visa-free countries if the Immigration Law is amended to replace the conjunction “and” with “or” between the terms “reciprocity” and “benefit principle.” Implementing alternative policies will be challenging without such changes, as the current Visa-Free Presidential Regulation conflicts with the Immigration Law.

Commission III and IX of the DPR RI should strictly prevent GoI from issuing executive orders contrary to the Immigration Law. Moreover, DPR RI could insist that GoI collect data about the severity of any violation of a visa-free policy, considering that it may seriously damage the public interest. Such data will assist DPR RI in deciding whether GoI could increase or decrease the number of foreign countries eligible for the visa-free policy. A vital question regarding the stipulation of a visa-free policy is why the laws and regulations adverse to the higher ones can be validated and enforced. It is difficult to obtain clear information about the reason for this problem. However, it can be assumed that certain stakeholders “break the rules” and use a shortcut to obtain approval from President Jokowi to issue the Visa-Free Presidential Regulation.

Acknowledgment

All authors contributed equally.

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Appendix I

List of Countries Granting Visa-Free/Visa on Arrival/e-Visa to Indonesia

No.	Country	Continent	No.	Country	Continent
1.	Cook Island	Oceania	37.	Pakistan	Asia
2.	Marshall Island	Oceania	38.	Singapore	Asia
3.	Niue	Oceania	39.	Tajikistan	Asia
4.	Papua New Guinea	Oceania	40.	Timor-Leste	Asia
5.	Tuvalu	Oceania	41.	Vietnam	Asia
6.	Fiji	Oceania	42.	Bermuda	Americas
7.	Micronesia	Oceania	43.	Chile	Americas
8.	Palau Islands	Oceania	44.	Ecuador	Americas
9.	Samoa	Oceania	45.	Nicaragua	Americas
10.	Armenia	Middle-East	46.	Brazil	Americas
11.	Jordan	Middle-East	47.	Colombia	Americas
12.	Qatar	Middle-East	48.	Guyana	Americas
13.	Iran	Middle-East	49.	Peru	Americas
14.	Oman	Middle-East	50.	Burundi	Africa
15.	Azerbaijan	Europe	51.	Comoro Islands	Africa
16.	Serbia	Europe	52.	Guinea-Bissau	Africa
17.	Belarus	Europe	53.	Malawi	Africa
18.	Barbados	Caribbean	54.	Mauritania	Africa
19.	Haiti	Caribbean	55.	Morocco	Africa
20.	Dominica	Caribbean	56.	Namibia	Africa
21.	St. Vincent and the Grenadines	Caribbean	57.	Senegal	Africa
22.	Brunei	Asia	58.	Sierra Leone	Africa
23.	Hong Kong (SAR China)	Asia	59.	Tanzania	Africa
24.	Kyrgyzstan	Asia	60.	Togo	Africa
25.	Macao (SAR China)	Asia	61.	Zimbabwe	Africa
26.	Maldives	Asia	62.	Cape Verde Islands	Africa
27.	Nepal	Asia	63.	Gabon	Africa
28.	Philippines	Asia	64.	Madagascar	Africa
29.	Sri Lanka	Asia	65.	Mali	Africa
30.	Thailand	Asia	66.	Mauritius	Africa
31.	Uzbekistan	Asia	67.	Mozambique	Africa
32.	Cambodia	Asia	68.	Rwanda	Africa
33.	Kazakhstan	Asia	69.	Seychelles	Africa
34.	Laos	Asia	70.	Somalia	Africa
35.	Malaysia	Asia	71.	The Gambia	Africa
36.	Myanmar	Asia	72.	Uganda	Africa

Source: <https://www.henleyglobal.com/passport-index>

Appendix II

List of Countries with Income per Capita Higher than Indonesia

Rank	Country	Income per Capita 2021 (in USD)	Rank	Country	Income per Capita 2021 (in USD)
1.	Luxemburg	131.782	56.	Romania	14.968
2.	Switzerland	94.696	57.	St. Kitts and Nevis	14.402
3.	Ireland	94.556	58.	Antigua and Barbuda	13.824
4.	Norway	81.995	59.	Panama	13.690
5.	United States	68.309	60.	Palau	12.850
6.	Denmark	67.218	61.	China	11.819
7.	Iceland	65.273	62.	Costa Rica	11.806
8.	Singapore	64.103	63.	Maldives	11.801
9.	Australia	62.724	64.	Russia	11.654
10.	Qatar	59.143	65.	Malaysia	11.604
11.	Sweden	58.977	66.	Bulgaria	11.321
12.	Macao SAR	58.004	67.	Nauru	10.125
13.	Netherlands	58.003	68.	Kazakhstan	9.828
14.	Finland	54.330	69.	St. Lucia	9.816
15.	Austria	53.859	70.	Seychelles	9.666
16.	Germany	51.860	71.	Mauritius	9.639
17.	Belgium	50.103	72.	Turkey	9.327
18.	San Marino	49.765	73.	Mexico	9.246
19.	Canada	49.222	74.	Guyana	9.192
20.	Hong Kong SAR	49.036	75.	Grenada	9.171
21.	Israel	47.602	76.	Argentina	9.122
22.	New Zealand	47.499	77.	Montenegro	9.064
23.	United Kingdom	46.344	78.	Turkmenistan	9.032
24.	France	44.995	79.	Serbia	8.748
25.	Japan	42.928	80.	Gabon	8.601
26.	United Arab Emirates	35.171	81.	Equatorial Guinea	8.074
27.	Italy	34.997	82.	Islamic Republic of Iran	8.034
28.	Korea	34.866	83.	Dominican Republic	7.951
29.	Brunei Darussalam	33.097	84.	Botswana	7.817
30.	Puerto Rico	32.233	85.	Thailand	7.702
31.	Taiwan Province of China	32.123	86.	St. Vincent and the Grenadines	7.212
32.	Malta	31.576	87.	Brazil	7.011
33.	Spain	30.996	88.	Dominica	6.989
34.	The Bahamas	30.070	89.	Bosnia and Herzegovina	6.728
35.	Cyprus	29.551	90.	Peru	6.678
36.	Slovenia	28.104	91.	North Macedonia	6.657
37.	Estonia	26.470	92.	Belarus	6.487
38.	Czech Republic	25.732	93.	Albania	5.991
39.	Kuwait	25.290	94.	Colombia	5.753
40.	Portugal	25.065	95.	Ecuador	5.665
41.	Bahrain	24.294	96.	South Africa	5.444
42.	Aruba	22.852	97.	Jamaica	5.328
43.	Saudi Arabia	22.700	98.	Paraguay	5.146
44.	Lithuania	22.245	99.	Tuvalu	5.116
45.	Slovak Republic	21.529	100.	Tonga	5.081
46.	Latvia	19.824	101.	Fiji	5.069
47.	Greece	19.673	102.	Azerbaijan	4.883
48.	Hungary	18.075	103.	Kosovo	4.856
49.	Poland	16.930	104.	Moldova	4.638
50.	Croatia	16.247	105.	Iraq	4.632
51.	Oman	16.212	106.	Guatemala	4.439
52.	Barbados	16.036	107.	Namibia	4.371
53.	Trinidad and Tobago	15.752	108.	Georgia	4.361
54.	Uruguay	15.653	109.	Jordan	4.358
55.	Chile	12.990			

Source: IMF (2021).

Exception:

1. The income per capita of Israel, Aruba, Montenegro, Equatorial Guinea, Colombia, Kosovo, and Iraq is above that of Indonesia, but they are not granted visa-free.
2. The income per capita of the Philippines, Cambodia, Laos, Vietnam & Myanmar is below that of Indonesia, but they are ASEAN members.
3. The income per capita of Timor Leste & Papua New Guinea is below that of Indonesia, but they are directly adjacent to Indonesia (optional).
4. Moroccan income per capita is under Indonesia's, yet it has been given visa-free for a long time through Presidential Regulation Number 43/2011 on Visa-Free.
5. The income per capita of Suriname is below Indonesia's, but it has historical ties to Indonesia (optional).