

Law's Application of The Government to Responding People Smuggling

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ABSTRACT

People smuggling is a transnational crime, that a person illegally crosses international borders from one, or more countries, by secret means, by fraud, or by using forged documents. People Smuggling, putting illegal immigrants and refugees as an opportunity for material gain. The potential for people smuggling in Indonesia is vulnerable, supported by the geographical factor of a vast coastline. As one of the world's trade routes, it must receive serious attention. With this urgency, this study discusses the role of the government in implementing legal policies in cases of people smuggling in Indonesia. This study applied a descriptive method with qualitative analysis. This paper concludes that people smuggling has been criminalized as transnational organized crime and included in the immigration law instruments in Indonesia.

Keywords: Law; People Smuggling; Law Enforcement.

INTRODUCTION

Human rights need to be upheld and respected in this fourth millennium era marked by the rapid development of technology and communication. The rapid growth of technology and information is kept in the fourth millennium period. Human rights are a feature of the change from national humanitarian relations to international coverage. In international relations, there is a law between countries known as international conventions. In 2000, the Republic of Indonesia became a participant and signed the United Nations Convention Against Transnational Organized Crime (UNCATOC). The tradition has also been ratified into national law through act number 5 of 2009, making immigration n agencies have an essential role in selecting the crossing of people entering and leaving the Territory of Indonesia.

By involving more than one country, of course, transnational crime is seen as a severe threat. Transnational crime can cause a form of deviation such as excessive exploitation of natural resources and human resources, giving rise to social problems such as poverty, conflict, and other losses. The existence of a crossing people, which is increasingly widespread, proves the role of a state is needed to help oversee a transnational crime. Of course, the distinction must be applied to citizens and foreigners to fulfil the rights and obligations conferred by a country.¹

¹ M. Alvi Syahrin. (2014). "Refleksi Hubungan Negara, Warga Negara, Dan Keimigrasian," *Bhumi Pura*: 37, <http://www.petaknorma.com/2014/04/refleksi-hubungan-negara-warga-negara.html>.

Indonesia is an archipelago with a very strategic geographical location, and this is certainly an advantage that can utilize in the national interest. But on the other hand, Indonesia's geographical area, close to several countries and becomes one of the international trade routes, becomes a threat or opportunity for a transnational crime to occur. In other words, the magnitude of the opportunity for transnational crimes to happen can not only be measured from the supervision of a country, but the geographical location of a country must consider. In addition, international crimes can also occur in Indonesia due to the large population. Thus, Indonesia becomes one of the countries with a large workforce and becomes a target for international market development. Thus making Indonesia a destination country and a transit country for cases of international crimes committed by developed countries.

The development of transnational crime in the form of people smuggling is increasing from year to year. Reporting from the INTERPOL website, on September 13, 2021, human trafficking and smuggling recently occurred as many as 500 victims in the Weka operation.² The increasing activity of people smuggling crimes is undoubtedly hazardous for a country and the safety of the people themselves. People smuggling is often also aimed at supplying the international sex and labour trade with the mechanism of a complex organized global crime network.

People smuggling occurs when an agreement between the smuggler and the person being smuggled for economic improvement, hope for a better life or avoiding conflicts in their country. Based on the explanation above, the writer tries to describe the problem to be formulated, What is the view of human smuggling as a transnational crime? And How is the government's law on people smuggling applied?

METHOD

Approach

This type of study is included in normative research, where this research is about legal politics, which means explaining, analyzing, and developing legal constructions about people smuggling. This study uses a conceptual approach and a statutory approach. The method of collecting research materials is carried out by identifying, and taking an inventory of laws, researching library materials (writings and scientific works), and other sources of legal material, which, of course, have relevance in this research.

Data Analysis Techniques

The legal issue analysis technique in this study uses logical thinking. It means explaining the law that combines inductive and deductive thought patterns in legal issues of concrete facts. Abstraction (law), legal values, principles, and norms formulated in positive legal rules, then elaborated and applied to resolve the substantial legal problems encountered.

The legal issue analysis technique in this study uses mixed logic thinking, meaning reasoning (law), a combination of combined thinking patterns from inductive and deductive patterns in the concrete factual legal issues. The processes in mixed-thinking logic are an abstraction (law), legal values, legal principles, and legal norms formulated in favorable legal rules, then concretized (explained) and analyzed to resolve concrete legal problems faced.

ANALYSIS AND DISCUSSION

The Concept of Legal Politics and People Smuggling in the Immigration Sector

² INTERPOL, "People Smuggling," last modified 2021, accessed September 20, 2021, <https://www.interpol.int/Who-we-are/General-Secretariat/Official-visits>.

Politics of law

Legal politics is a political way behind the formation of a law or policy in a particular field; on the one hand, legal politics is also helpful for influencing related institutions in that field in carrying out legal provisions at the practical and operational level. Regarding legal politics, some people argue from the point of view of pure legal theory. Namely, legal politics is one of the disciplines that discusses the behavior of authorized officials by choosing several available alternatives to produce legal products to achieve status goals.

In other words, the law is a silent force, and politics is the law that does not silence; its existence is perceived and affects people's lives. The task of legal politics is to examine changes that need to be made by existing laws to meet existing needs one request. From some of the definitions above, legal politics has several scopes, including legal instruments; alternatives available; legal products are born; and national goals as the ultimate goal. Thus, essentially legal politics is carried out to achieve national goals, namely security, maintenance of order, economic development, and the creation of a conducive government.

In its application, the government's legal politics regarding people smuggling modifier referred to the United Nations Convention Against Transnational Organized Crime 2000 (UNTOC 2000). The government also ratified the convention through Law no. 5 of 2009. In its development, in 2004, the tradition gave birth to an additional protocol to UNTOC 2000, namely the Protocol Against The Smuggling of Migrant by Land, Sea, and Air, Supplementing the United Nations. Convention Against Transnational Organized Crime.

By being a participating country that ratifies the international agreement, Indonesia has the binding power to participate in it. The concrete implementation of legal politics that is applied as a government regarding people smuggling is not explicitly made. Still, it is stated in Article 120 of The Act no. 6 of 2011 concerning Immigration.

People Smuggling

People smuggling is an illegal movement of people with specific aims and objectives by ignoring the territorial boundaries of a region or country. In practice, smuggling is divided into people who smuggle or are called smugglers and people who are smuggled. This activity can be carried out when both reach an agreement. In contrast to human trade, in which there is an element of coercion and exploitation. In this case, human smuggling does not result in direct losses between the smuggler and the smuggled person, but the state is the one who is harmed.

Act No. 6 of 2011 concerning Immigration states that people smuggling is an act aimed at seeking profit, either directly or indirectly, for oneself or for another person who brings a person or group of people, either organized, or unorganized or orders other people. Other means to bring a person or group of people, either organized or unorganized, who does not have the right to legally enter the Indonesian territory or leave the Indonesian territory and/or enter the territory of another country where the person does not have the right to enter the territory legally, either by using valid documents or fake documents or without using Travel Documents, whether through immigration checks or not.³

Transnational View of the People Smuggling Problem

International migration is a matter of population movement from one country to another and involves socio-political impacts, legal status, and human rights.⁴ In carrying out human smuggling, it is not much different from human trafficking. Namely, several stages starting from

³ Indonesia, "Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian," pasal 1 angka 32.

⁴ M Alvi Syahrin and Immigration Polytechnic.(2019). "Imigran Ilegal , Migrasi Atau Ekspansi ? M . Alvi Syahrin | Petak Norma," no. October 2015.

the Process, Method, and Purpose. In the process stage/ namely, smuggling has similarities with human trafficking, namely the activity of moving someone from one place to another. Entering the method stage that distinguishes human trafficking is the absence of elements of violence, coercion, or exploitation. Still, there is an agreement between the smuggling agent, and People who want to be smuggled can enter an area illegally. In the final stage, namely the destination stage, there is an element of profit or profit obtained directly or indirectly or individually or in groups.

When a person who enters the Territory of Indonesia does not go through an immigration checkpoint or an immigration checkpoint but does not go through an Immigration Officer's examination, it is an immigration crime.⁵ Immigration can also happen to people who claim to be refugees. Refugee Status clearly shows that refugee is not a personal statement but a unique identity. The presence of UNHCR in Jakarta shows a figure of 3,375 asylum seekers who apply for refugee status and surveillance. However, not all foreigners who enter Indonesia without documents are entitled to refugee status from UNHCR.⁶

After obtaining refugee status, immigrants are required to respect all countries that have been granted asylum. The Government of the Republic of Indonesia will provide opportunities for refugees to stay temporarily in Indonesia until a third country is found as a resettlement location. If UNHCR refuses to grant immigrant refugee status, the Indonesian Government should have the right to deport them. Unfortunately, this will be a burden on the Government of the Republic of Indonesia; otherwise, they can voluntarily return to their country of origin. The problem is that the Indonesian Government cannot provide regular budget funds for the deportation of these illegal immigrants. They still do not want to return voluntarily, so Indonesia has not received assistance from the International Organization for Migration.⁷

Indonesia has ratified the protocol against people smuggling through Act number 25 of 2009. Still, specifically, the handling and prosecution of people smuggling in Indonesia itself are only regulated in Act number 6 of 2011 concerning Immigration. There is still minimal handling that holds victims of trafficking and smuggling man. With so many smuggling cases, Indonesia is also not a country that ratified the 1951 protocol. In the future, the presence of refugees who are increasingly arriving and the lack of legal protection will cause uncertainty about refugees' existence in Indonesia. Perhaps what happens can even cause social insecurity due to cultural differences.

In dealing with this reality, we must be aware and understand that there will be a threat where the arrival of illegal immigrants on behalf of refugees is getting worse; the need for a legal umbrella that regulates this matter becomes a solution. Of course, this also impacts the Indonesian people themselves when there is an investigation by the police and Immigration. Those who will be suspects or perpetrators of crimes are Indonesian citizens themselves as providers of smuggling services or smugglers. At the same time, illegal immigrants cannot be said to be part of the perpetrators of smuggling even though they are aware and have intended to do this and are only hiding behind the status of refugees or asylum seekers waiting for a determination from UNHCR.

That way, illegal immigrants feel very safe. They are facilitated by the lack of a legal umbrella that regulates them, as 10 Indonesian citizens were involved in people smuggling

⁵ M Iman Santoso. (2004). *Perspektif Imigrasi Dalam Pembangunan Ekonomi Dan Ketahanan Nasional*. Jakarta: UI-Press.p.19

⁶ UNHCR Indonesia, "Penentuan Status Pengungsi," *UNHCR*, last modified 2020, <https://www.unhcr.org/id/penentuan-status-pengungsi>.

⁷ Direktorat Jenderal Imigrasi Indonesia, "Imigrasi Harap UNHCR Segera Bawa Pencari Suaka Telantar Ke Luar Negeri," last modified 2019, accessed September 18, 2021, <https://www.imigrasi.go.id/id/2019/07/08/imigrasi-harap-unhcr-segera-bawa-pencari-suaka-telantar-ke-luar-negeri/>.

from Malaysia and were charged with the Anti-Trafficking in Human and Anti-Immigrant Smuggling Law of 2007 (Atipsom) and - Immigration Act 1959/63.⁸

Along with the increasing presence and presence of illegal immigrants in Indonesia, there has been a result in the community, namely differences in political, economic, and sociocultural views. The case of illicit migration in Indonesia is not only a problem of one or two institutions but has become a common problem. As the problems mentioned above regarding the consequences of the increasing number of illegal immigrants and the lack of enforcement against them can be described as follows:

- 1) The ideological impact, the fundamental view that is maintained and in under the values of people's lives, is not impossible to bring up another idea along with the inflow and outflow of illegal immigrants who have their opinions and are not sure that they are under the basis firmly held by the nation.
- 2) Political impact. It can be taken as an example of smuggling Iranians into Australia through the State of Indonesia. Before obtaining an entry permit from Australia, and the immigrant will remain in Indonesia and become a burden for the Indonesian state. Indirectly it can affect state ties politically; in this case, the three political relations that are adrift are Indonesia as a transit country, Australia as a destination country for migrants, and Iran as a country of origin.
- 3) The economic impact is that by coming to Indonesia illegally the person actually has reduced the country's foreign exchange earnings because illegal immigrants come without a visa. In addition, the competition in the community due to illegal immigrants employed as laborers can be paid cheaper than native citizens.
- 4) The socio-cultural impact occurs when the entry of foreigners does not go through legal channels or is smuggled. Of course, it does not pass the "screening" stage when submitting a visa application. The foreigner certainly brings a lot of socio-cultural influence to the lives of Indonesian people, as well as applies to Indonesian people who are smuggled out of the country. And after returning to bring new cultural influences that are not necessarily suitable for Indonesian society.
- 5) The impact on state security, smuggling that occurs both from outside to inside and vice versa results in national vulnerability. Smuggling is because their arrival and return have their importance. If it is not handled correctly, there may be an increase in law violations in Indonesia, such as robbery, theft of money to meet their needs. Moreover, their smuggled entry is nothing but the Purpose of terrorist activities and others

Regulations Regarding People Smuggling in Indonesia

The law governing transnational crimes of people smuggling and attempted smuggling in Indonesia itself has a limited legal umbrella or can be said to be only one, The Act Number 6 of 2011 concerning Immigration in Article 120 which reads:

- (1) *Any person who commits an act aimed at seeking profit, either directly or indirectly, himself or for another person by bringing a person or group of people, either organized or unorganized, or ordering another person to bring a person or group a person, either organized or unorganized, who does not have a legal right to enter the Indonesian Territory or leave the Indonesian Territory and/or enter the Territory of another country, whose person does not have the right to enter the Territory legally, either by using a valid document or fake documents or without the use of Travel Documents, whether through immigration checks or not, sentenced for Human Smuggling with a minimum imprisonment of 5 (five)*

⁸ Detik News, "Terlibat Upaya Penyelundupan Manusia, 10 WNI Ditahan Polisi Laut Malaysia," last modified 2019, <https://news.detik.com/internasional/d-4702025/terlibat-upaya-penyelundupan-manusia-10-wni-ditahan-polisi-laut-malaysia>.

years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 500,000,000.00 (five hundred million rupiahs) and a maximum of Rp. 1,500,000,000.00 (one billion five hundred million rupiahs).

(2) Attempts to commit the crime of Human Smuggling shall be punished with the same punishment as referred to in paragraph (1).⁹

Case

As reported by the *detikNews* daily news, a smuggling case of 99 Rohingya occurred on June 22, 2021, in Aceh. The perpetrators of the smuggling are four people, Afrizal, Faisal, Abdul Aziz, who are Indonesian citizens, and Shahad Deen, a Rohingya who lives in Medan, North Sumatra. The smugglers were sentenced to 5 years in prison each.¹⁰

This case was revealed when there were reports from fishermen that dozens of Rohingya were in the middle of the sea with damaged boats. After being investigated, the rescue action was a mere *modus operandi*. The police later named the four people as suspects.

The smuggling of 99 Rohingya is suspected off having occurred on the orders of AR, the Rohingya who accommodated in Medan. AR then invites Shahad Deen to look for a ship. They contacted Faisal, Lhokseumawe, to prepare a boat to pick up the Rohingya in the middle of the sea. Faisal then invited AR and Shahad to pick up the Rohingya from a large ship waiting in the middle of the ocean by communicating using a unique password.

The Lhoksukon District Court's decision imposed a crime related to people smuggling related to article 120 of the immigration law to the defendants Faisal, Afrizal, Abdul Aziz, and Shahad with five years imprisonment and a fine of Rp. 500.000.000 provided that it could not pay the fine, it was replaced with imprisonment during one month.

In this case, we can see that the only legal instrument in the case of people smuggling is Article 120 of the Immigration Act. If we observe in this article, the punishment is imposed only on the smuggler. This is, of course, unfortunate because human smuggling occurs. After all, because it is not coercion, but there is an agreement between the smuggler and the person being smuggled, and the state is the loser.

These smugglers took advantage of the Indonesian situation by studying the problem in Indonesia, starting from the geographical location, the character of the Indonesian people, and the existence of UNHCR in the nation's capital. Indonesia's strategic geographical location is known as the cross position between the Asian continent and the Australian continent. Besides that, the attitude of the Indonesian people who are known to be friendly to foreigners is a factor in itself for Indonesia being affected, even not as a transit country but as a destination country for smuggling.

It can be said that People who are smuggled are essentially illegal immigrants but are not subject to legal sanctions. Of course, the current legal instruments do not really significantly affect people being smuggled in. In the fourth part of Act No. 6 of 2011 concerning Immigration, the crime of human smuggling and victims of human trafficking have special attention in taking action, which is stated in Article 87 of the Immigration Act. Other detainees at the Indonesian Immigration Detention Center.

Government efforts against people smuggling.

The government's efforts in responding to people smuggling cases are through preventive and repressive efforts. Efforts that have been made before and after the immigration action

⁹ Indonesia, "Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian."Pasal 120

¹⁰ Agus Setyadi, "4 Penyelundup 99 Warga Rohingya Ke Aceh Dihukum 5 Tahun Penjara," *DetikNews*, last modified 2021, <https://news.detik.com/berita/d-5609654/4-penyelundup-99-warga-rohingya-ke-aceh-dihukum-5-tahun-penjara>.

takes place. This effort is stated in Article 89 paragraph (2) and paragraph (3) of The Act Number 6 of 2011 concerning Immigration which says:

(2) Preventive efforts as referred to in paragraph (1), are carried out by:¹¹

- a. exchange of information with other countries and relevant agencies in the country, including the modus operandi, supervision, and security of Travel Documents, as well as the legitimacy and validity of documents;
- b. technical cooperation and training with other countries covering treatment based on humanity towards victims, security and quality of Travel Documents, detection of forged documents, exchange of information, as well as monitoring and detection of people smuggling by conventional and non-conventional methods;
- c. provide legal education to the public that human trafficking and human smuggling are criminal acts so that people do not become victims;
- d. guarantee that the Travel Document of identity issued is of high quality so that the document is not easily misused, falsified, altered, imitated, or issued against the law; and
- e. ensure that the integrity and security of Travel Documents issued or issued by or on behalf of the country to prevent the creation of such documents against the law in terms of issuance and use.

(3) The repressive efforts, as referred to in paragraph (1), are carried out by:¹²

- a. Immigration investigations against perpetrators of criminal acts of trafficking in persons and people smuggling;
- b. Immigration Administrative Actions against perpetrators of criminal acts of trafficking in persons and people smuggling; and
- c. cooperation in the field of investigation with other law enforcement agencies.

Other preventive efforts are related to immigration control. The current immigration law has its advantages in tackling the problem of transnational crime. Foreigners will be refused a visa application to Indonesia when they have committed or are involved in an international crime as regulated in Article 42 of The Act Number 6 of 2011 concerning Immigration. This is an early step to prevent troubled foreigners from entering Indonesia. Next, the immigration act has criminalized people smuggling as a transnational crime in Article 13 paragraph (1) letter g. immigration officials can and are authorized to refuse entry to foreigners if the foreigner is included in practice or network of transnational organized crime such as trafficking in persons, prostitution, and people smuggling. Foreigners proven to be involved in these practical activities will be placed under surveillance while waiting for expulsion or deportation from Indonesia.

CONCLUSION

From the discussion described, we can conclude that people smuggling is different from human trafficking. The main difference is the status of victims of trafficking in persons, while people smuggling is not. However, people smuggling is still seen as a transnational crime, c that because people smuggling meets the criteria of a characteristic of an international crime, namely, (i) carried out in more than one country, (ii) Preparation, planning, direction, and supervision of the crime committed outside another country., (iii) Engage in a criminal organization which of course is carried out by more than one country, (iv) Has a direct or indirect impact on a country.

The application of government law on people smuggling is not explicitly applied. Still, legal institutions regarding people smuggling in Indonesia have been crystallized in Article 120 of Law Number 6 of 2011 concerning Immigration. This article still has a drawback:

¹¹ Indonesia, "Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian." Pasal 89 ayat (2)

¹² *ibid.* Pasal 89 ayat (3)

imprisonment will only be applied to smugglers so that it creates a deterrent effect for people who are smuggled. Furthermore, the Government has special efforts to fight cases of people smuggling, and this is done through preventive and repressive measures as referred to in Article 89 paragraph (2) and paragraph (3) of The Act no. 6 of 2011 concerning Immigration.

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