



Juridical Analysis of Law Enforcement Against Perpetrators of Criminal Acts Human Smuggling (Research Study of the General Criminal Investigation Directorate of the National Police)

Mesniar Novrina Sari Duha^{1*}, Ramon Nofrial², Darwis Anatami³, Erniyanti⁴,
Soerya Respationo⁵

Postgraduate of Law Studies Program, Faculty of Law, Universitas Batam,
Indonesia

Corresponding Author: Mesniar Novrina Sari Duha mesnov91@gmail.com

ARTICLE INFO

Keywords: Juridical Analysis,
Law Enforcement, Crime,
Human Smuggling

Received : 21, October

Revised : 23, September

Accepted: 30, November

©2022 Duha, Nofrial, Anatami,
Erniyanti, Respationo: This is an
open-access article distributed under
the terms of the [Creative Commons
Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

One of the cross-border crimes that often utilize Indonesian territory as a transit point is human smuggling, popularly known as people smuggling. Human smuggling is classified as a transnational organized crime with a wide area of operation. Indonesia is one of the areas of the country targeted by illegal immigrants before being smuggled to their destination, namely countries on the Australian continent. This phenomenon has made human smuggling a criminal offense taken very seriously by all levels of the world community. In less than two decades, significant changes in Indonesia's strategic environment in the form of upheaval in the Asian region have encouraged human smuggling crimes and become one of the most exciting types of transnational crimes. Riau Islands, as one of the provinces in Indonesia, is a strategic area that has sea borders with Singapore and Malaysia, causing Riau Islands to become a stopover place for illegal migrants and the perpetrators so that there are many human smuggling mafias roaming around looking for victims. One of the factors triggering human smuggling that is difficult to eradicate and still occurs today in the Riau Islands is the existence of sectoral egos and various forms of modus operandi carried out by human smugglers.

INTRODUCTION

One of the cross-border crimes that often utilize Indonesian territory as a transit point is human smuggling, popularly known as people smuggling. Human smuggling is classified as a transnational organized crime with a wide area of operation. Indonesia is one of the areas of the country targeted by illegal immigrants before being smuggled to their destination, namely countries on the Australian continent. This phenomenon makes human smuggling a criminal offense that is very seriously handled by all levels of the world community. Seeing this, the causes and background of human smuggling are inseparable from the conditions, order, and even value systems considered not to allow the development of human potential and hope in their homeland. Various pressures in the population problem, the problem of strategic inequality or unequal distribution of opportunities and socio-economic development, or the occurrence of various conflicts for various reasons have long been understood as triggers for unauthorized migration flows.

LITERATURE REVIEW

Riau Islands, as one of the provinces in Indonesia, is a strategic area that has sea borders with Singapore and Malaysia, causing Riau Islands to become a stopover for illegal migrants and the perpetrators so that there are many human smuggling mafias roaming around looking for victims. All efforts have been made by various countries in various parts of the world to fight this crime against humans through the Protocol Against The Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, which was then ratified in 2009 through Law Number 15 of 2009 concerning the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime. In Indonesia, human smuggling is implicitly regulated through Emergency Law No. 8/1955 on Immigration Crimes and Immigration Law No. 9/1992. However, these two national legal provisions cannot prosecute perpetrators of human smuggling because there is no precise definition.

METHODOLOGY

This research method is normative law supported by sociological (empirical) legal research. Normative Juridical Approach/Legal Research Method and Sociological Juridical Approach Method. As for the place/location of the research, it will be conducted at the Kepri Police General Criminal Investigation Directorate Office on Jalan Hang Jebat Number 81 Batu Besar Nongsa Riau Islands. The population in this study are Investigators of Subdit IV Renakta Ditreskrim Polda Kepri, especially those involved in the process of handling human smuggling offenders. The samples in this study were two investigators who handled one of the human smuggling cases and two perpetrators in the case. In preparing this thesis proposal, the data collection activities are through observation, interviews, conducting experiments, processing information, and data, and then drawing a conclusion that can be

accounted for. The data collection tool used in this research is secondary data, which is obtained from library research that supports primary data.

RESULT AND DISCUSSION

Regulation of Human Smuggling Crime

Law functions as a tool to regulate order and association in society and the form of decisions on various issues. In terms of legality, the government's ratification of the UN Protocol against Human Smuggling by sea, land, and air supports the UN Convention against Transnational Organized Crime with Law Number 15 of 2009 concerning the Ratification of the Protocol against the Smuggling of Migrants by Land, Sea, and Air, complementing the United Nations Convention against Transnational Organized Crime where there is a special section on handling human smuggling as a criminal act, the Government revised Law Number 9 of 1992 by issuing Law Number 6 of 2011 where there is a special section on handling human smuggling by the Immigration and Police ranks.

Police Functions, Roles, Duties and Authorities

The police function includes preventive duties, preemptive socialization, and repressive duties. Repressive duties consist of non-judicial police actions that restore a disturbed state of order based on the general obligations of the Police and police actions in the field of criminal proceedings as investigators based on the principle of legality by the provisions of the criminal procedure law.

Police discretion is defined or formulated as the capacity of police officers to maintain between several legal or illegal actions or even take no action when carrying out their duties. Police discretion is an authority derived from the principle of general police obligations, namely a principle that authorizes police officers to act or not act according to their judgment in the context of their general obligation to maintain public order and security.

The Investigation Stage in the Crime of Human Smuggling

After conducting a thorough investigation into matters that are indicative of a criminal offense, the Police investigator collects all the information obtained in the investigation to ensure that it falls into the realm of education. The stages that must be carried out in the framework of the investigation are Finding a criminal offense, making a Police Report or Incident Report, Task Order, Investigation Order Making Minutes of Investigation, Summoning the necessary witnesses, Making an Order for Commencement of Investigation; Searching; Confiscation; Arrest; Detention. In conducting an investigation, the most important thing to do is to complete the evidence so that the case can be tried in court. By Article 184 of the Criminal Code, there are instructions on what evidence can be completed in order to try the suspect.

Obstacles in Law Enforcement against perpetrators of the crime of Human Smuggling

People smuggling is regulated under Law No. 6 of 2011 on Immigration, while Trafficking in Persons is regulated under Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons. The prosecution of human smuggling crimes is new to most prosecutors because in addition to the fact that the law regulating this matter, Law No. 6 of 2011 on Immigration, is still relatively new, which was enacted on May 5, 2011, prosecutors are also still more familiar with Law No. 9 of 1992 on Immigration. The lack of internal socialization and implementation guidelines from the Attorney General's Office of the Republic of Indonesia has made officials both at the High Prosecutor's Office level and at the Attorney General's Office level often differ in making decisions related to the handling of human smuggling crimes.

There are two opinions among prosecutors regarding this matter. The first opinion is that immigration crimes can be handled by Immigration Civil Servant Investigators (PPNS) and investigators from the Indonesian Police as stipulated in the Criminal Procedure Code. However, there is also an opinion that only the Immigration PPNS is authorized to investigate immigration crimes, and the Prosecutor's Office can only receive a Notice of Commencement of Investigation (SPDP) issued by the Immigration PPNS.

Despite these two different opinions, the majority of prosecutors (especially those assigned to areas where there have been human smuggling cases) use the first opinion, which is to accept SPDPs from both Immigration PPNS and Police Investigators based on the following considerations: The first consideration is juridical. The new immigration law authorizes PPNS Immigration to investigate immigration crimes. However, this law never limits the authority to investigate immigration crimes to PPNS Immigration only, either explicitly or implicitly.

The immigration law confirms the authority of the Immigration PPNS to investigate immigration crimes. On the one hand, as stipulated in Article 1 point 8 of Law No. 6 Year 2011, immigration criminal investigators (Immigration PPNS) are immigration officials authorized by law to handle immigration crimes. However, on the other hand, it recognizes the role of investigation by the Police if we refer to Article 105, which is then continued with Article 104 of the same law. If we look closely, then by Article 105 of Law No.6 Year 2011, the immigration PPNS is authorized as an investigator of immigration crimes carried out by the provisions of this law. The provisions referred to in this law, although in reverse order, are in the previous article. Article 104 of Law No.6 Year 2011 stipulates that the investigation of immigration criminal offenses is conducted based on criminal procedural law. Furthermore, based on the criminal procedure law as in KUHAP, the investigation is conducted by two institutions, namely the Police and Immigration. Article 1 point 1 of KUHAP stipulates that Investigators are state police officers of the Republic of Indonesia or certain civil servants who are expressly authorized by law to conduct investigations.

Law Enforcement Solutions for Human Smuggling Offenders

Even though distributed in all regions, the human resources of Immigration PPNS are minimal compared to Police investigators. The number of illegal immigrants can reach hundreds of people and come at any time. Handling a large number of illegal immigrants is already a complexity in itself, not to mention the work patterns of people smugglers in the form of networks and layers, thus adding to the existing complexity. By conducting investigations by Immigration PPNS and Police investigators, these complexities can be overcome together so that handling this criminal offense can be more effective and efficient.

The third consideration is that there has been good coordination between prosecutors and Police investigators and between prosecutors and Immigration PPNS so that all difficulties in handling this criminal offense can be found. Coordination is also established between fellow investigators to help each other when facing obstacles in the field. For example, in some places where Police investigators have previously handled human smuggling cases, these investigators are willing to assist Immigration PPNS, who are the first to conduct investigations so that the results of the investigation can be accepted and declared complete by the Public Prosecutor.

As mentioned above, the work pattern of human smugglers is networked and layered. Therefore, the prosecutor cannot see a criminal offense committed by a person who fulfills the elements of human smuggling crime as an individual crime or a stand-alone crime. If this perspective is used, the prosecutor will see the crime committed by a human smuggler as a disconnected crime. In contrast, in order to get a complete picture, the prosecutor must use constructive imagination so that it can be seen that the perpetrator is related to other perpetrators and the criminal act committed is related and part of a grand crime involving many people through cooperation and coordination mechanisms.

If the prosecutor does not use constructive imagination, only perpetrators with a small role will be caught, which can be easily replaced by other perpetrators. However, if the prosecutor sees it as a network, then not only the field implementers can be netted, but the intellectual actors and funders can also be netted. If this happens, it can paralyze the smuggling network or at least make them unable to function for a long time. On the other hand, if the prosecutor does not use constructive imagination and only handles cases without trying to develop them, the prosecutor may unconsciously find himself in a situation where he is perpetuating the crime of human smuggling by only handling small agents. The arrest and conviction of small agents do not affect the smuggling operation, as many other agents are willing to take the place of the arrested agents. This is natural as the profitability of the crime makes the perpetrators overlook the legal risks involved.

For field officers, the manual will be more concise and contain practical tips that can be used. Academic frameworks and juridical theories are only included in this handbook, which is intended for decision-making officials to help them determine the basis for practical decision-making.

CONCLUSIONS AND RECOMMENDATIONS

Article 1 point 32 of Law Number 6 the Year 2011 on Immigration states: 'Human 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 in an organized or unorganized manner or orders another person to bring a person or group of people, either in an organized or unorganized manner, who does not have the right to legally enter the territory of Indonesia or leave the territory of Indonesia and 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, either through Immigration checks or not.'

The criminal provisions in Article 120 of Law Number 6 the Year 2011 on Immigration, namely: 'Any person who commits an act to seek profit, either directly or indirectly, for himself or another person by bringing a person or group of persons, either in an organized or unorganized manner, or ordering another person to bring a person either in an organized or unorganized manner, who does not have the right legally to enter the territory of Indonesia or to leave the territory of Indonesia and or another country, where the person does not have the right to enter the territory legally, either by using a valid document or a fake document or without using a travel document, either through Immigration inspection or not, shall be punished for Human Smuggling with imprisonment of not less than 5 (five) years and not more than 15 (fifteen) years and a fine of not less than Rp. 500,000,000,- (IDR). 500.000.000,- (five hundred million rupiah) and a maximum of one and a half Rp. 1.500.000.000,-

FURTHER RESEARCH

This research still has limitations so further research needs to be done on this topic "Juridical Analysis of Law Enforcement Against Perpetrators of Criminal Acts Human Smuggling (Research Study of the General Criminal Investigation Directorate of the National Police)".

REFERENCES

- Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Jakarta: Toko Gunung Agung, 2002.
- Bambang Sunggono, *"Metode Penelitian Hukum"*, Jakarta: Raja Grafindo Persada, 1997.
- Cst Kansil, Christine, S.T Kansil, Engelian R, Palandeng dan Godlieb N Mamahit, *Kamus Istilah Hukum*, Jakarta, 2009.
- Darwan Prinst, *Hukum Acara Pidana Dalam Praktik*, Jakarta: Djambatan, 1998.
- Dominikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*, Yogyakarta: Laksbng Pressindo, 2010.
- Idham, *Konsolidasi Tanah Perkotaan Guna Meneguhkan Kedaulatan Rakyat*, Bandung: Alumni, 2004.
- Cst Kansil, Christine, S.T Kansil, Engelian R, Palandeng dan Godlieb N Mamahit, *Kamus Istilah Hukum*, Jakarta, 2009
- Darwin Ginting, *Hukum Kepemilikan Atas tanag Bidang Agribisnis*, Bogor: Ghalia Indonesia, 2010
- Dominikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*, Laksbng Pressindo, Yogyakarta, 2010
- I Made Pasek Diantha, *"Metode Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum"*, Jakarta: Kencana, 2017.
- IOM, *Buku Petunjuk Bagi Petugas Dalam Rangka Penanganan Kegiatan Penyelundupan Manusia dan Tindak Pidana yang Berkaitan dengan Penyelundupan Manusia*. Jakarta: IOM, 2012.
- Natalis Pigay, *Migrasi Tenaga Kerja Internasional (Sejarah, Fenomena, Masalah dan Solusinya)*, Jakarta: Pustaka Sinar Harapan, 2005.
- Soejono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: Rajawali Pers; 2022.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 1 Tahun 1964 tentang Peraturan Hukum Pidana.

Undang-Undang Darurat Nomor 8 Tahun 1955 Tentang Pidana Imigrasi.

Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia.

Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian.

Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 6 Tahun 2019 tentang Penyidikan Tindak Pidana.