



The Legal Impact of the Covid-19 Pandemic on Efforts to Manage People Smuggling as a Transnational Crime in Indonesia

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Abstract

The rapid development of information and transportation technology in the era of globalization has facilitated human mobility to carry out activities and lives. Human mobility can occur between countries, thus creating human migration. The process of human migration between countries requires official documents and must obtain permits. The difficulty of licensing and the absence of complete documents are often the openings for transnational crimes of people smuggling. People Smuggling is also happening in Indonesia. The handling of people smuggling in Indonesia is regulated in Law Number 6 of 2011 concerning Immigration. The COVID-19 pandemic has impacted efforts to deal with people smuggling in Indonesia. Based on this, this study aims to analyze the legal impact of the COVID-19 pandemic on efforts to handle people smuggling as a transnational crime in Indonesia. The research method used is normative juridical. The literature search will be used to obtain secondary data as primary data. Based on the results of the study, it can be seen that the Covid 19 pandemic has caused the Indonesian Government to issue a series of policies. One is the Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19). This regulation prevents the mobility of people entering and leaving Indonesia during the pandemic to reduce the transmission of Covid 19. This policy is also one of the strategies to reduce the crime rate of people smuggling.

Keywords: Covid 19 Pandemic, Transnational Crime, People Smuggling

1. Introduction

At the beginning of 2020, the world was shocked by the Coronavirus (Covid-19) spread, which began in Wuhan City, China, then spread to all parts of the world. The spread of Covid-19 virus infection, followed by financial difficulties in several countries in the world, is known to impact increasing human trafficking and smuggling significantly. The Covid-19 pandemic requires countries to follow strict security protocols by restricting or closing state borders. Thus, the activity of migration becomes so limited that it is impossible to enter the territory of a country. However, this fact is not the case. One of the countries that experienced an increase in the level of human smuggling during the pandemic was Vietnam. From 2020 to early 2021, the Blue Dragon organization, engaged in rescuing children of trafficking victims, managed to rescue as many as 1000 victims of trafficking and smuggling syndicates that would be dispatched to destination countries, namely China and Myanmar (Chattu & Chami, 2020).

Indonesia itself is also experiencing the same thing. The smuggling of people in Indonesia during the Covid-19 pandemic continues to occur, although it has not increased like that experienced by Vietnam. The factors causing human smuggling in Indonesia, in addition to the location and geographical condition of the Indonesian state as an archipelagic country. There is difficulty in constantly monitoring the vast sea waters and small islands in Indonesia that are so many; another factor is also the need for more information from relevant institutions or authorities on forms of human smuggling crimes (Guymon, 2000). The lack of information or appeal to the people of the local islands was unaware of the form of crime and accepted the arrival of illegal immigrants. Finally, the community became involved in smuggling by providing temporary shelter or becoming a stopover location for these illegal immigrants (Missbach & Palmer, 2020). This crime pattern is often found in residents of Indonesian islands directly adjacent to neighboring countries. This ultimately has an impact on the emergence of security problems in the form of transnational crimes, as well as transnational organized crime both from the mode operation, form, and type, as well as locus and tempus delicti involving several countries and their legal systems. Some areas in Indonesia that are often routes for human smuggling to destination countries such as Jayanti Beach and Santolo Beach in West Java Province, Kabupaten Bulukumba (South Selawan), Batam Island (Riau Islands), Surabaya (East Java), and Rote Island (East Nusa Tenggara). Indonesia's three countries of origin of illegal immigrants are Afghanistan, Iran, and Pakistan (Ford & Lyons, 2012). As also said smuggling both by land and sea, Indonesia is already known as a transit country for human

smuggling in the international world. as for transit areas in Indonesia such as Medan, Riau, Jakarta, Surabaya, Entikong, Bali, Maluku Islands, and other Indonesian waters. Although Indonesia is only a transit country, the existence of illegal immigrants within a certain period does not rule out the possibility of posing a threat to national security and sovereignty for the Indonesian state itself (Mansur & Antomarta, 2021).

Based on data obtained by UNODC (United Nations Office on Drugs and Crime) states that in 2013 illegal immigrants in Indonesia amounted to 3645 while according to data from the Directorate General of Immigration, the total number of illegal immigrants throughout 2017 reached 14,337 illegal immigrants in Indonesia as of June 30, 2017. Therefore, with the increase in human smuggling crimes, Indonesia warns Indonesia to anticipate and overcome this smuggling problem immediately. However, this applies to the crime of smuggling people who come from abroad, for the problem of these crimes within the territory of Indonesia itself is also often a threat. Many Indonesians carry out human smuggling in illegal migrant labor abroad or destination countries. They are referred to as illegal immigrants because the labor in question does not use procedures and rules and procedures that the Indonesian government has determined, for example; not completing the documents to work abroad that have been determined by the Indonesian immigration department or traveling abroad / destination country, not through the official channels that have been determined. The smuggling of migrant/illegal labor is an act that is very detrimental to the country, both the country of origin and destination and even the labor itself. Thus, when a worker or TKI (Indonesian worker) commits a violation or is found to have entered the destination country without using official procedures or conducting a legal case, it will become difficult for those illegal workers who do not have a passport or other supporting documents to get assistance from the Indonesian state authorities. Passports and other supporting documents are a guarantee of legal protection for every citizen who is abroad.

In the regulations in Indonesia, People Smuggling is regulated through Emergency Law Number 8 of 1955 concerning Immigration Crimes as well as in the Immigration Law Number 9 of 1992. However, the two national laws cannot ensnare the perpetrators of the crime of human smuggling. This is because the two provisions do not clearly explain the definition of the crime of human smuggling; the crime is only considered a form of violation of Immigration and not a form of criminal activity at that time. It took more than 19 (nineteen) years for Indonesia to formulate and find solutions to the crimes of Human Smuggling. However, unfortunately, in that period, more and more perpetrators of human smuggling crimes have emerged and started these actions so that they are very detrimental to Indonesia. In order to overcome the growing problem of Human Smuggling, the Indonesian Government has issued provisions in the form of Law Number 6 of 2011 concerning Immigration which regulates the crime of Human Smuggling. In the provisions of Article 1 number 32 of Law Number 6 of 2011 concerning Immigration, it is stated:

"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, whether organized or unorganized or orders another person to bring a person or group of people, whether organized or unorganized, who do not have the legal right to enter Indonesian Territory or exit Indonesian Territory and enter Territories of other States where the person does not have the right to enter the territory lawfully, whether using valid or forged documents or without the use of Travel Documents, whether through immigration checks or not" (Schloenhardt & Davies, 2013; Alsharif, 2022).

New challenges arise when Indonesia is affected by the Covid-19 pandemic. Like other countries that have taken new steps to change the regulatory system in the immigration sector, Indonesia also designed regulations through Permenkumham Number 7 of 2020 and developed and equipped with other regulations in which the Indonesian Government will close access to certain countries around the world. The Indonesian Government, through Permenkumham, reissued Permenkumham Number 8 of 2020 concerning the Termination of the Free Cement Visit Visa and Visit Visa During Marriage as well as the granting of a Forced Stay Permit, which was established on March 18, 2020, which was then resumed with Permenkumham Number 26 of 2020 concerning Visas and Stay Permits in the New Habit Adaptation Period which is still valid today. Therefore, it is expected during the Covid-19 pandemic that many foreign nationals will be found to have violated their residence permits (overstays) in several regions in Indonesia. The difficulty of renewing a residence permit like this can potentially increase human smuggling activities.

Because of the rampant human smuggling activities even during the Covid-19 pandemic, this topic deserves to be raised in the research. Mainly to see the extent of law enforcement carried out by the Government in dealing with people smuggling crimes, especially during the Covid-19 pandemic.

2. Problem Formulation

Based on the background mentioned above, the author can formulate a problem, namely:

1. What is the impact of the regulation on limiting the mobility of people during the Covid-19 Pandemic by the Government of Indonesia on the existence of People Smuggling in Indonesia?
2. How is the law enforcement of People Smuggling in Indonesia by the Indonesian Government during the Covid-19 Pandemic?

3. Research Methods

In this paper, the author uses a type of normative legal research by researching secondary data library materials. Which method is carried out using secondary data in the form of legal materials consisting of international

agreements, also using legal materials obtained from the opinions of legal experts and authorities either orally or in writing as well as other legal books relevant to this research (Afriansyah & Achjani Zulfa, 2018).

4. Results and Discussion

4.1. The Impact of the Regulation on Limiting the Mobility of People during the Covid-19 Pandemic by the Government of Indonesia on the Existence of People Smuggling in Indonesia

The Covid-19 pandemic, as a new international problem, dramatically affects the survival of every society, even in every aspect of the life of the global community. Almost all parts of the world have been affected by Covid-19. Therefore, the Government in each country encourages the globalization of people's mobility to other countries to cause the potential for the massive spread of the Covid-19 virus to various countries in the world. The emergence of Covid-19 so that it becomes a global pandemic has the potential to threaten every aspect of human life, especially in terms of human security itself; in order to respond to this, WHO (World Health Organization) carried out a form of international cooperation as well as coordinating and socializing all countries in the world, especially countries exposed to Covid-19. The Covid-19 pandemic presents a global problem that must be faced by every country; seeing that most countries in the world are experiencing a significant increase in the number of Covid-19 cases without exception, the territorial boundaries of a country also have an impact on global economic growth in these countries. This fact causes obstacles suffered by every country apart from health problems which are the top priority of every country. Eventually, most countries become overwhelmed in overcoming the impact of covid-19 in every aspect of people's lives to be unstable (Christiani, 2016).

In the form of the Indonesian Government's efforts during the Covid-19 Pandemic, it creates provisions and rules in order to reduce and prevent the spread of the Covid-19 virus, such as limiting activities and activities in the form of work or others, conducting comprehensive socialization for the wearing of masks and clean hydration patterns. The implementation of restricted night hours or activities, self-isolation, prohibition to leaving the house, avoiding crowds or crowds, and regional quarantine until the temporary closure of the country or region (lockdown) shows that it is so severe and dangerous that the threat of this Covid-19 pandemic to the continuity and security of people's lives around the world (Adamy & Rani, 2022).

In the implementation of tackling the spread of the Covid-19 virus, the Indonesian Government does not close access to and out of a country (Lockdown) as some other countries do, as for the non-implementation of the lockdown because the Indonesian Government still has concerns about the condition of the country's economy and the Indonesian people themselves if they carry out the lockdown policy. So in order to overcome this problem, the Indonesian Government prefers to use the Large-Scale Social Restrictions (PSBB) policy. This PSBB policy is stated nationally in the Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Diseases in 2019 (Covid-19), further, this policy is explained in detail through the Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the context of Accelerating The Handling of Corona Virus Disease 2019. The two rules expressly stipulate all actions that must be implemented to prevent the widespread of Covid-19 in Indonesia.

However, the potential crimes that can occur during the Covid-19 Pandemic, especially in Indonesia, one of the biggest threats is the state defense factor, which is the function and task of the Government, especially Indonesia, so that finally the creation of national goals as a form of welfare and security for the Indonesian people. The potential threat is to lead to the territorial boundaries of the state so that later it will impact the sovereignty of the Indonesian state. People smuggling is a form of threat that arises in the border areas of a country, including Indonesia, which is famous for being a transit country (Syahputra, et al., 2021).

Along with the impact caused by the existence of Covid-19 in Indonesia, more and more, of course, irresponsible people take advantage of the situation to gain income regardless of having to commit acts that smell of crime or have an impact that harms other people. This is certainly a potential for People Smuggling crimes, especially in Indonesia itself, considering the supporting factors owned by the Indonesian state, such as fragmentary territorial areas and coupled with the territorial boundaries of the Indonesian state adjacent to other neighboring countries allowing for perpetrators of People Smuggling crimes launched the crime. This significantly affects Indonesia in terms of ideology, politics, economy, socio-culture, national security, and Immigration. To prevent this act of People Smuggling, the Government of Indonesia has Law Number 6 concerning Immigration according to Law Number 6 of 2011 concerning Immigration still distinguishes refugees and asylum seekers as illegal immigrants or immigrants who enter Indonesian territory without official documents or without going through the procedures stipulated in the relevant rules or laws.

It is stated in Article 120 of the Immigration Law that the crime of human smuggling will be punished with the threat of imprisonment for a minimum of five years and a maximum of 15 years and a fine of at least Rp.500.000.000,- million rupiah and a maximum of Rp.1.500.000.000,- billion rupiah. In this case, the threat can also be imposed related to attempts to commit criminal acts of human smuggling as stipulated in the immigration law. Furthermore, Article 8 paragraph (1) of the Immigration Law states that: Everyone who enters or leaves Indonesia's territory must have a valid travel document. So, of course, if it is associated with the entry and exit of people into

Indonesian territory, Foreign Nationals or refugees who do not have valid and valid travel documents are certainly not allowed to enter Indonesian territory as stipulated in Law number 6 concerning Immigration (Zulkifli, et al., 2020).

However, when referring to Human Rights, immigrants have the right to be given protection by taking refuge in these provisions. The immigrants have a basis for moving to other places. Immigrants often decide to migrate illegally and even go through a network of smugglers to move from one country to another, when in fact, the purpose of the immigrants is to start their journey as a refugee or what can be called a refugee. So this is what makes human smuggling and illegal immigrants have criminal acts (Jakovljevic, et al., 2020).

4.2. The Law Enforcement of People Smuggling in Indonesia by the Government of Indonesia during the Covid-19 Pandemic

So far, in the regulation related to People Smuggling, Indonesia only uses Law Number 6 on Immigration. The regulation, even human smuggling, needs to be explained clearly and in detail. As a result, the rule only regulates the entry and exit of foreigners into Indonesian territory illegally, be it unofficial documents or other matters related to the administration, which later, if violated, will be subject to prison sanctions and fines for violators. Therefore, this is a factor for the Indonesian Government in tackling and preventing people smuggling crimes. However, despite this, Indonesia can use internationally agreed international legal instruments to eradicate transnational organized crime through the "United Nations Convention Against Transnational Organized (Crime, 2000). In addition, in 2004, an additional protocol was created by UNTOC in the form of "Protocol Against The Smuggling of Migrant by Land, Sea, and Air Supplementing the United Nations Convention Against Transnational Organized Crime" (Atak & Simeon, 2014). Indonesia has also ratified this Protocol through Law Number 15 of 2009 concerning Ratification of the Protocol Against The Smuggling of Migrants By Land, Sea, and Air Supplementing The United Nations Convention Against Transnational Organized Crime.

That apart from the UNTOC instrument and the Protocol of Law No. 15 of 2009 concerning the Ratification of the Protocol Against The Smuggling of Migrants By Land, Sea, and Air Supplementing The United Nations Convention Against Transnational Organized Crime." Can be used by Indonesia, but it is clear that this is a weakness that Indonesia has in cracking down on People Smuggling crimes. The perpetrators of people smuggling crimes realize that Indonesia does not have special rules in the form of law regarding the crime of People Smuggling or human smuggling. Finally, with this weakness the perpetrators can take advantage of this weakness to reap financial benefits, especially During the Covid-19 Pandemic; the impact of the rapidly developing economy affects the welfare of people in the world, including in Indonesia, with an increase in unemployment, especially in the migrant worker sector. If you look at the Indonesian Immigration Law, most immigrants who enter Indonesian territory still use illegal methods or immigrants who use refugee status (Missbach & Sinanu, 2011).

Because obtaining refugee status from UNHCR is complex and uncertain, Indonesian law is underestimated by immigrants; the existence of immigrants in Indonesia is very profitable and safe because Indonesia itself does not have provisions or regulations governing human smuggling. So that even illegal immigrants who enter Indonesian territory will later play a role as victims of human smuggling; this is because those who will be entangled in regulations in Indonesia are only limited to Indonesian citizens who participate in the criminal practice of human smuggling. Thus, in order to anticipate the impact, development, and growth of human smuggling actions in Indonesia, especially during the Covid-19 pandemic, it is essential to have parties working together to eradicate human smuggling. Among other things, such as cooperation between law enforcement officials and the community, especially the communities that inhabit border areas in Indonesia. In addition, Indonesia itself must immediately make special regulations and rules as outlined in the Law so that it becomes a guideline and a shield against the crime of human smuggling.

The act of human smuggling results from the failure of our society and economy to protect the most vulnerable and uphold rights under national law. They should not be 'punished' additionally during times of emergency. Plus, of course, Covid-19 still has to be monitored. If such actions inadvertently negatively affect vulnerable groups, such as victims of human smuggling, adjustments should be made to minimize losses and to ensure the needs of such groups are adequately addressed while prioritizing public health. A culture of the rule of law needs to be implemented.

The support of agencies such as the Government, local governments, the media, government agencies, and intermediary organizations is essential to promote and facilitate constructive efforts to strengthen intergroup relations. Coordination of these institutions creates a system that can provide resources and incentives to promote and strengthen intergroup relations. Social and cultural activities, understood as program intervention strategies to facilitate migrant inclusion in recipient communities are essential as they offer non-institutional spaces for interaction.

5. Conclusion

People Smuggling appeared not only during the conditions of the Covid-19 pandemic but existed long before the Covid-19 pandemic was present. This pandemic has impacted the world economy and groups that want to smuggle people or exploit humans. Seeing that these groups are quickly adapting to this era of the Covid-19 Pandemic, the authorities, especially Immigration, have done various ways to minimize this by monitoring places or locations where human smuggling practices often occur, including which regions and/or countries have been suspected. In addition, Indonesia sees the crime of human smuggling as a transnational crime that can threaten state security. The handling of

regulatory procedures in Indonesia related to illegal immigrants and human smuggling crimes is still regulated by Law Number 6 on Immigration, but this Immigration Law is insufficient and less effective in handling human smuggling cases; there must be regulations that specifically and specifically regulate human smuggling crimes. Thus, there must be cooperation between fellow government agencies, both the police and international organizations, that overshadow this crime of human smuggling. Moreover, the crime of human smuggling is a severe problem that needs special attention not only in Indonesia but in the world so that the existence of special provisions outlined in the instrument of the Law can minimize and prevent all forms of deficiencies in the Immigration Law which is currently a reference in Indonesia.

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