

The Challenges of Law Enforcement in Indonesia in Transforming Human Smuggling as Transnational Organized Crime

Herbin Marulak Siahaan, Rahayu and RB. Sularto

***Abstract---** In 2009, Indonesia ratified the United Nations Convention Against Transnational Organized Crime and Protocol Against the Smuggling of Migrants by Land, Sea and Air. By using juridical normative approach and case study, this research attempts to scrutinize international standards on People Smuggling and examine how Indonesian law enforcement have interpreted and applied standards in handling the people smuggling cases. It finds that the implementation of law enforcement in handling cases of people smuggling in Indonesia is still local and has not carried out international standards effectively. Therefore, the need for taking strategic and concrete efforts to transform people smuggling as transnational organized crime in law enforcement practices in Indonesia.*

***Keywords---** Transnational Organized Crime, Law Enforcement, UN Smuggling of Migrants Protocol.*

I. INTRODUCTION

At present in all parts of the world, the number of movements of people crossing borders between countries has increased very rapidly, which shows that the world is increasingly global and connected (Simanjuntak, et al., 2019). These changes which are the effects of economic globalization and technological advances have also been exploited by transnational organized offenders to gain profits by carrying out illegal activities (Joko Priyono & Sudiro, 2020). Human smuggling is one of the crimes that provides huge benefits for organized crime groups across the country by exploiting illegal migration requests as a result of very strict entry restrictions imposed by industrialized countries (Shelley, 2005; Fadilla, 2016; Nuraeny, 2015). Globally, the United Nations Office on Drugs and Crime (UNODC) estimates that at least 2.5 million people have been smuggled around the world in 2016 with a value of around 5.5 - 7 billion US Dollars (UNODC, 2018). The profits of these actors are obtained from the costs of smuggling services which are determined based on the distance from the trafficking route, the number of borders traversed, geographical conditions, transportation equipment used, the use of falsified identity and travel documents, detection risks, etc.

As the largest archipelago country in the world which consists of 16,056 islands with a long coastline of 99,093 km. Indonesia is a very vulnerable area with activities carried out by perpetrators of human smuggling crimes. In an effort to prevent and eradicate this crime, Indonesia has ratified two related international treaties, namely the United Nations Protocol Against Human Smuggling on Land, Sea and Air (Protocol against the Smuggling of Migrants by Land, Water and Sea) and the UN Convention Against Crime Organized Cross Country (UN Convention Against

*Herbin Marulak Siahaan, Universitas Diponegoro, Semarang, Indonesia.
Rahayu, Universitas Diponegoro, Semarang, Indonesia.
RB. Sularto, Universitas Diponegoro, Semarang, Indonesia.*

Transnational Organized Crime). Furthermore, to harmonize the provisions in the two international legal instruments, the Government of Indonesia has enacted and enacted a new Immigration Act, Law No. 6 of 2011.

The steps of the Government of Indonesia that have provided a legal framework to prevent and combat the crime of people smuggling are important steps, but these efforts alone are not enough. The next step that is very difficult is to articulate the legal framework in everyday law enforcement. As stated by Satjipto Rahardjo (2009), law enforcement is an attempt to bring ideas of justice, legal certainty and social benefits into reality. The process of manifesting ideas is the essence of law enforcement. While Barda Nawawi Arief (2003) states that effectiveness implies the effectiveness or success of legal instruments in tackling crime. In the context of law enforcement for human trafficking crimes, the realization of ideas about justice, legal certainty and social benefits is far from what is expected. Or in other words, there is still a gap (gap) between the legal framework that becomes the reference with the ineffectiveness of law enforcement practices.

Based on the experience of handling cases of people smuggling in Indonesia, the ineffectiveness of law enforcement practices is particularly evident from the inability of law enforcement agencies to punish perpetrators who are a network of organized crime actors operating across countries and failing to completely reveal the role of each of these actors. This situation also results in the often perpetrators being tried and sentenced to only field perpetrators by using the provisions of related administrative violations whose proof is relatively easier with a lighter sentence than the crime of human smuggling. In addition, as stated above, the purpose of human smuggling activities is to seek profits, but so far practically law enforcement officials have never used financial investigations as part of their investigative efforts and relate them to transnational evidence. In this regard, this article is intended to identify and examine challenges and to transform investigations into the handling of people smuggling that are still "very local" in order to make them investigations of "transnational organized crime". This research was conducted using a normative juridical approach.

II. HUMAN TRAFFICKING AND ORGANIZED CRIME ACROSS THE COUNTRY

Human smuggling is a transnational organized crime and the regulation is specifically regulated in the Protocol Against Human Smuggling, whether by land, sea and air. The definition of human smuggling is regulated in Article 3 (a) of the Protocol which defines it as: *“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State of which the person is not a national or a permanent resident”*

The definition of human smuggling in Article 3 (a) is the basis for determining criminalized acts of human smuggling as specified in Article 6 of the Protocol which is also a transnational organized crime. Furthermore, arrangements for the linking of people smuggling as organized crime across countries can be found in Article 1 of the Protocol. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein. The offenses established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Based on the provisions above, it is clear that the Protocol Against Human Smuggling is a complement to the Convention Against Transnational Organized Crime. This means that the understanding and implementation of the provisions of the Protocol must be related to the Convention, including the provisions in Article 6 of the Protocol which require States parties to criminalize the acts of human smuggling; allowing someone who is not a citizen or permanent resident to live or live illegally without fulfilling the requirements; producing, procuring and possessing falsified travel and identity documents carried out to enable human smuggling; organizing or directing one of the crimes as mentioned in previous points; conducting an experiment to commit one of the violations in accordance with applicable law in the participating country; participating in one of the above-mentioned violations in accordance with applicable law in the participating country.

In other words, the obligation of the State Party to criminalize the acts stipulated in Article 6 of the Protocol, must be placed in the context of regulating transnational organized crime as stipulated in the Convention. The Convention has provided an understanding of what is meant by transnational organized crime in the provisions of Article 2 (a) and Article 3 paragraph 2. According to the provisions in Article 2 (a) of the Convention, organized crime groups are *“a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”*

Article 3 paragraph 2 of the Convention states that a crime is transnational if it is committed in more than one State; committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or committed in one State but has substantial effects in another State. "

Based on these definitions, there are at least 3 important aspects regarding the linkage of People Smuggling as Organized Crimes Cross-Country and this should be the focus in conducting investigations.

First, a person cannot be single. Human smuggling is not possible by one person alone, but involves several actors with their respective roles. UNODC has identified the typology of perpetrators and the role of networks of perpetrators of people smuggling crimes as shown by Schloenhardt (2011) in Table 1.

Table 1: Typology of Actors and Roles

| Culprit | Role |
|--|--|
| Organizer | Those who are overall responsible for carrying out human smuggling operations, including having a role in directing, employing other people or engaging with third parties, overseeing the whole process, determining and changing routes and means of transportation. |
| Recruiters | Those who have the role of finding people to be smuggled in and liaising with those who will smuggle them. These Recruiters usually live permanently in the country of origin or the country of transit from human smuggling activities and have the knowledge and language skills of smuggled migrants. |
| Transporters or Guides | Those whose role is to guide and bring smuggled people through one or more countries and oversee the crossing of a country's borders. Usually these guides are people who come from these border areas and have local knowledge. |
| Spotters, Driver, Messengers and Enforcers | They are the parties who carry out other work in the human smuggling process. For example, Spotters have the role of providing specific information regarding checks by law enforcement authorities at the border. Whereas Enforcer's role is to protect the human smuggling business, which includes safeguarding and monitoring migrants who will be smuggled, including sometimes by using threats and violence during the human smuggling process. |
| Service providers and Suppliers | These are parties that provide incidental or routine services to support people smuggling operations as requested. Examples of such services are the provision of ships by ship owners or the provision of accommodation by hotel owners. |
| Other party | Are parties involved in processes that can involve government officials and corrupt law enforcement officials, where they accept bribes to expedite human smuggling. |

Second, the act is carried out across national borders. One element of human trafficking is to get someone into a country that person is not a permanent citizen or citizen. In this regard, human smuggling involves at least two countries, namely the Origin and Destination Countries. For example, this phenomenon occurs in human smuggling activities originating from Indonesia with a Destination to Malaysia (UNODC, 2018). Given the geographical proximity of the two countries, the route chosen for human smuggling is relatively shorter and the activity involves at least only two countries, namely Indonesia and Malaysia. In addition, human smuggling does not only occur between neighboring neighboring countries, but also across countries within an area and even outside the region. Considering the distance traveled, the human smuggling process often uses the territory of one or more countries for transit or stopover before continuing the journey to the destination country. This phenomenon, for example, occurs in Indonesia's position as a Transit State. Human traffickers facilitate migrants from Myanmar (especially Rohingya ethnic) and some Southwest Asian countries (Afghanistan, Pakistan, Iran and Iraq) and South Asia (Sri Lanka and Bangladesh) to stop in Indonesia before continuing their journey to the destination country, namely Australia.

Third, the goal is to look for financial or other material benefits. The costs paid by people smuggled and the benefits derived by people smugglers play a very important role in understanding the modus operandi of people smuggling and its relation to organized crime. The amount of fees paid by those smuggled is very dependent on several factors, such as distance and complexity of the trip, the mode of transportation used, the presence of border surveillance officers and law enforcement in the Source, Transit and Destination Countries, as well as the number of people to be moved and whether the process this is done in a closed or secret manner (Schloenhardt, 2011). However, it should be noted that the benefits obtained by the perpetrators must not only be financial benefits, but can be in the form of non-material benefits, such as the provision of movable or immovable property.

III. PRACTICE OF LAW ENFORCEMENT

As a country that has ratified both the Convention and the Protocol, it should be the implementation of law enforcement against human traffickers in Indonesia based on the standards of the two instruments of the international treaty. But in reality, the paradigm and practice of law enforcement agencies in dealing with human smuggling crimes are still far from the standards specified in international law. Efforts to investigate the prosecution by law enforcement agencies seem not to have been seriously and optimally linking cases of human smuggling crimes that they deal with as organized crime across countries.

For example, this practice is seen in human smuggling cases that were tried by the Dumai District Court through Decision Number 30 / PID.B / 2013 / PN. Dum. This case tried a single perpetrator, a truck driver carrying 26 migrants from Malaysia. People smugglers use Indonesian territory as a transit before they will go to Australia. However, the group was captured by law enforcement in Indonesia on December 13, 2012 after migrants who were smuggled across the Malacca Strait from Malaysia and then transported by truck to ship embarkation in several areas in Indonesia that would take them to Australia. In the trial it was revealed that the perpetrators were promised to receive a sum of Rp. 300,000 and in the previous human smuggling activities, he received Rp. 200,000. For his actions, the perpetrators were sentenced to 5 years in prison for being proven guilty of primary charges of committing human trafficking under Article 120 (1) of Law 6 of 2011 concerning Immigration.

Although the perpetrators have been charged and convicted with the shortest penalty in Article 120 (1) of the Immigration Act, it appears that law enforcement in these cases still does not meet international human trafficking standards. In this regard, it is clearly seen that the handling of this case is still local in nature and has not attempted to treat the handling of the smuggling case as a transnational organized crime. As explained above, there are three important elements in organized crime across countries, namely perpetrators who are not single, involving more than one country and the purpose of seeking financial or material gain. Law enforcement in the case indicates ineffectiveness in dismantling and punishing perpetrators who are organized criminal networks but only succeeded in reaching out to field actors who are exploited by the main network of people smuggling, especially organizers. The trial of the case also reflects the weak efforts of law enforcement agencies to look for evidence from other countries and relate it to evidence obtained in Indonesia. The search and collection of evidence through international collaboration is an important strategic step taken to uncover a network of people smugglers. In addition, serious and systematic efforts by law enforcement agencies have not yet been seen to conduct financial investigations that are urgently needed to find and uncover evidence of financial or material benefits obtained by the perpetrators' networks. Efforts to prove the financial or material benefits of handling such cases appear to be focused only on the profits obtained by the field perpetrators who have been convicted, namely in the form of money received.

IV. TRANSFORMING LAW ENFORCEMENT OF PEOPLE SMUGGLING

As previously explained that the spirit of using the Protocol Against Human Smuggling as harmonized in Law No. 6 of 2011 on Immigration, apparently has not been seen in the implementation of law enforcement. Law enforcement officials, especially investigators, are still struggling with technical evidence to ensnare local actors. The field evidence has not been able to be associated with supporting evidence that is cross-country so that the implementation of human smuggling law is less effective and does not meet international standards that regulate it as transnational organized crime.

A key challenge faced by law enforcement agencies in carrying out transformation to realize law enforcement is in accordance with these international standards, namely improving the cognitive abilities of law enforcement officials who have not been educated and skilled in handling human smuggling cases. Moreover, many investigators from the National Police and Immigration who have not been trained recognize the anatomy of human smuggling crimes and Transnational Organized Crime. The ability to identify networks of perpetrators and their respective roles, through increased intelligence and investigation capabilities, will greatly help to dismantle the network of human trafficking crime organizations.

Also noteworthy is the lack of collection of evidence across countries, particularly with the Origin and Destination countries of human trafficking crimes, which has indicated that international cooperation that has been forged has not been effective. Although Indonesia has been quite active in building international cooperation, both bilaterally and regionally, in reality these efforts have not yet had a positive impact on the implementation of law enforcement for people smuggling in Indonesia. Therefore, the Indonesian government needs to take the strategic steps needed to improve and concretize international cooperation, especially in the context of effective implementation of law enforcement for human smuggling in Indonesia. These strategic steps could include

improving cooperation in exchanging information and intelligence, training and conducting joint operations, extradition agreements and mutual legal assistance agreements.

The next transformation effort that is also very important to be carried out by law enforcement agencies is to improve investigative capabilities in conducting financial analysis. Conducting financial analysis is an investigation technique that is usually done in the case of organized crime especially to find the benefits obtained by the network of perpetrators. Basically there are three basic methods for conducting financial analysis, namely the net worth method (networth method), the expenditure method (expenditure method), and the bank deposit method. These three methods are designed to determine the total wealth or expenditure a person makes compared to the income he reports (Albanese, 2004).

V. CONCLUSION

The implementation of law enforcement against human trafficking criminals in Indonesia does not meet international standards stipulated in the United Nations Against Human Trafficking Through Land, Sea and Air as well as the International Convention Against Transnational Organized Crime that has been affixed by the Government of Indonesia.

Therefore, it is very important to make efforts to transform strategic and comprehensive steps in order to ensure that international standards are integrated and concretely and consistently implemented in law enforcement for perpetrators of human smuggling crimes in Indonesia.

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