

Criminology and Immigration in Organized Transnational Crimes

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Abstract: *The high level of human mobility in the millennial era has an ideological, political, economic, social, cultural, defense and security impact on state sovereignty. In the process of human mobilization, it does not only bring positive development to the country. negative impact in the form of crime in the process of human migration. Transnational crime is a serious crime that can be identified with criminological theory. Organized transnational crime (Transnational Organized Crime) can be overcome with a good system in the process of crossing people into and out of the territory of a country. Immigration plays an important role in handling transnational organized crime, both in preventive and repressive efforts. The application of Exclusive Power is the authority of immigration officials in refusing entry to foreigners, delaying departure for Indonesian citizens and punishing subjects suspected of transnational organized crime.*

Keywords: Criminology, Immigration, TOC

1. Introduction

In realizing state sovereignty and national dignity, it is necessary to have legal certainty and law enforcement in Indonesia. In Law Number 30 of 2014 concerning Government Administration which mentions the Principle of Legal Certainty. In the explanation of Article 10 paragraph 1 letter a The principle of legal certainty is the principle in the establishment of a legal state based on the provisions of laws and regulations, propriety and justice in every government administration policy. Selective policy is a form of application of the principle of legal certainty in the field of immigration. Implementing a policy to conduct immigration checks on every person leaving and entering the territory of Indonesia. The implementation of immigration checks is applied not only to subjects who cross state borders but also to transportation means and the person in charge of transportation means. Immigration checks are carried out at immigration checkpoints (TPI) either by air through airports, by sea through ports, by land through inter-border cross-posts. state (PLBN), as well as other places based on the authority that has been given.¹

The selective policy implemented by Indonesian immigration is a form of political immigration law of a country which aims to maintain the absolute sovereignty of a country. Reflecting the hopes of the state's interests, based on aspirations and for the welfare of the community. Sovereignty or "Sovereignty" comes from the Latin word "Superanus" which means "the top". State sovereignty is recognized based on the existence of the people, government, sovereign territory and international recognition from other countries. Sovereignty is defined as the highest power but there are still limitations. Two

elements limiting the highest power or sovereignty, among others:²

- a) Power is limited to the territory of the country that has that power.
- b) That power ends when the power of a country begins.

In international law, the principle of state sovereignty is the principle or doctrine of jus cogens or the basic principle of international law which is recognized by the international community as a norm that should not be violated under any circumstances. Jus Cogens has officially become an international principle in article 53 of the Vienna Convention on Treaty Law.³ Immigration checks for foreigners who enter the territory of Indonesia use the Prosperity Approach and the Security Approach.

Immigration has a role in law enforcement against state sovereignty which is the right of a country to grant permits or apply prohibitions for foreigners to enter or not to enter Indonesian territory. Foreigners who enter the territory of a country must submit and obey the laws of that country as well as citizens of that country.⁴ Immigration functions in the law enforcement process through regulations contained in Law No. 6 of 2011 concerning Immigration, Government Regulation No. 13 of 2013 concerning Implementing Regulations of Law No. 6 of 2011 concerning Immigration which has been amended into Government Regulation No. 26 of 2016 concerning Amendments to Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning

² Mochtar Kusumaatmadja dan Etty R. Agoes, *Pengantar Hukum Internasional*, Bandung : Alumni, 2003, hlm 16 – 18.

³ Schmalenbach, Kirsten (2018). Dörr, Oliver; Schmalenbach, Kirsten, ed. Vienna Convention on the Law of Treaties (dalam bahasa Inggris). Berlin, Heidelberg: Springer Berlin Heidelberg. hlm. 965–1012. doi:10.1007/978-3-662-55160-8_56. ISBN 9783662551592.

⁴ J.G. Strake. 2000. *Pengantar Hukum Internasional*, edisi kesepuluh. Jakarta: Sinar Grafika. Hlm. 210

¹ Arifin, Ridwan. 2018. *Penolakan Orang Asing ke Indonesia melalui Tempat Pemeriksaan Imigrasi Di Bandara Internasional: Sebuah Kedaulatan Absolut*. Depok : Politeknik Imigrasi. hlm 152.

Immigration. In enforcing immigration law in Indonesia, the procedure for immigration checks is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 44 of 2015 concerning Procedures for Checking Entry and Exit of Indonesian Territory at Immigration Checkpoints and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia number 4 of 2015 2017 concerning procedures for Immigration supervision.

The regulation is explained in more detail in the procedures issued by the Directorate General of Immigration in the Circular Letter of the Director General of Immigration Number IMI-1012.UM.01.01 of 2017 concerning the Granting of Visas on Types of Travel Documents and Letter of the Director of Immigration Traffic Number IMI.2-UM.01.01- 2.1385 of 2018 concerning the Granting of Free Visit Visa and Visit Visa on Arrival to Foreigners Holders of Travel Documents originating from the British Citizens group.

Immigration Control in Indonesia⁵ includes supervision of Indonesian citizens and foreigners. Supervision is carried out in 2 things, including administration and the field.⁶ Supervision of Indonesian citizens is carried out when applying for travel documents for the Republic of Indonesia, at immigration checkpoints and when they are abroad. Supervision of foreigners is carried out through administrative supervision when foreigners apply for visas to enter Indonesian territory, while at immigration checkpoints, until when they are doing activities in Indonesia.

The role of immigration in immigration law enforcement is closely related to the supervision of foreigners. The issue of transnational crime or transnational crime has become a hot issue and has become the core issue of Indonesian immigration. Transnational crime is divided into 3 types of crime, namely Hi-tech Crime, Financial Crime, and Traffic Crime. The role of immigration in handling cases of transnational organized crime is carried out in a preventive and repressive manner. Based on Law No. 6 of 2011 concerning Immigration preventively, it is stated in Article 13 regarding the refusal to enter foreigners. Then repressive measures are stated in Article 120 concerning people smuggling. In this paper, we will explain the concept of criminology and the role of immigration in the occurrence of transnational organized crime.

A. Problem Formulation

- 1) What is the perspective of criminology in explaining transnational organized crime?
- 2) What is the role of immigration in handling transnational organized crime?

⁵ Penjelasan tata cara pengawasan keimigrasian di atur dalam Peraturan Menteri Hukum dan HAM nomor 4 Tahun 2017 tentang tata cara Pengawasan Keimigrasian. Pengawasan dilakukan terhadap WNI dan Orang Asing. bentuk pengawasan dilakukan secara administrasi saat permohonan dan pengawasan lapangan. Secara garis besar keimigrasian memiliki peran aktif dalam penanggulangan kejahatan transnasional.

⁶ *Ibid.* Pasal 2.

B. Research Method

This research includes normative legal research, namely by researching library materials or secondary data.⁷ Normative legal research is usually only researched library materials or secondary data covering primary, secondary and tertiary legal materials. This study focuses on examining the criminology of a Transnational Organized Crime and also how the relationship between Immigration and TOC is. The type of data used in this study is secondary data which can be grouped into primary legal materials, secondary legal materials, and tertiary legal materials according to the object of research. To obtain secondary data, it will be carried out through library research using documentary studies on references relevant to the object of research obtained from laws and regulations, books and articles as well as in dictionaries and encyclopedias.

Nature and form of research

The research conducted is normative legal research. The first step is normative law, which uses secondary data obtained from various laws and regulations relating to the role of customary law in Indonesia in the era of globalization and various literatures related to the problems in this research.

Data collection technique

To obtain a scientific truth in this writing, the authors use data collection methods by means of library research, namely studying and systematically analyzing books, magazines, newspapers, internet, laws and regulations and other materials.

2. Results and Discussion

1) Explanation of Criminal Law

Crime is a term that contains a basic understanding in legal science, as a term that is formed with awareness and gives certain characteristics to criminal law events. Criminal acts have an abstract meaning from concrete events in the field of criminal law, so that criminal acts must be given a scientific meaning and clearly defined to be able to separate them from the terms used daily in people's lives.⁸

In positive criminal law, criminal acts can be referred to as criminal acts, strafbaar feit, offenses, criminal events, which can mean what actions are prohibited or ordered (required) which can be punished if violated or committed. In criminal law, criminal acts can be classified into crimes and violations.⁹

However, in the use of the term criminal act, criminal law experts have their respective definitions. As Andi Hamzah gives the term offense which means an act or action that is prohibited and is threatened with punishment by law.¹⁰

⁷ Soerjono Soekanto., *Pengantar Penelitian Hukum*, Jakarta: UI Press, 2010, h.52.

⁸ Amir Ilyas, *Asas-Asas Hukum Pidana (Memahami Tindak Pidana dan Petanggungjawaban Pidana Sebagai Syarat Pidanaan)*, (Yogya, Mahakarya Rangkang Offset, 2012), h. 18

⁹ Badan Diklat Pendidikan dan Pelatihan Pembentukan Kejaksaan, *Modul Asas-Asas Hukum Pidana*, Jakarta, 2016, h. 7

¹⁰ Andi Hamzah, *Asas-Asas Hukum Pidana*, (Jakarta, Rineka Cipta, 1994), h. 74 h. 88

*Starbaarfeet is defined by Pompe as a violation of norms (disruption to the rule of law) which has intentionally or unintentionally been carried out by an actor, where the punishment for the perpetrator is purely for the sake of maintaining legal order.*¹¹

S.R. Sianturi uses the term criminal act which means as an action at a certain place, time and condition that is prohibited (or required) and is threatened with criminal by law that is against the law, as well as with an error committed by a person (the person responsible). Sianturi argues that the term act is an abbreviation of the word "action" which means that the person who takes the action is called the follower. Any action that is done by everyone, but in many cases an action can only be done by certain people, for example according to class in work and according to gender. Sianturi explained that according to gender, for example, women or men, while according to groups in work, for example, workers, employees and so on. So the status/classification of an act according to Sianturi must include the element of "whoever".¹²

2) Explanation of the Crime of Human Smuggling

The definition of an international crime can be found in the judgment of the United States War Crimes Tribunal in the Hostages case, which states as follows.

“An international crime is such an universally recognized as a criminal which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the state, that would have control over it under normal circumstances.”

From the description of the definition, it can be concluded that an international crime is an act that is universally recognized as a crime. This international recognition is due to the fact that the crime is a very big problem and is of concern to the international community. Thus, this crime is not only subject to the jurisdiction of certain countries, but can be subject to the jurisdiction of all countries or can be applied to universal jurisdiction.¹³

Romli Atmasasmita explained that an act can be said to be an international crime, if it meets the following criteria/elements:

- a) International elements, which are included in this element are:
 - A direct threat to world peace and security (direct threat to world piece and security)
 - Indirect threat to world peace and security (indirect threat to world piece and security)
 - Shaking the feelings of humanity (shocking to the conscience of humanity)
- b) Transnational element
 - Actions that have an impact on more than one state (conduct effecting more than one state)

- Actions involving or affecting citizens of more than one state (conduct including or affecting citizens of more than one state)
 - Facilities and infrastructure and methods used exceed the territorial boundaries of a country (means and methods transcend national boundaries)
- c) The element of necessity, namely the need for cooperation between countries to carry out countermeasures (cooperation of state necessary to enforce).¹⁴

By examining the definition of international crime and its elements, people smuggling in principle has fulfilled the elements of transnational, even all of the above elements are included in the crime of people smuggling. This can be viewed from various factors, including economic, social and legal factors that can have a negative impact on the destination or transit country.

Because people smuggling can be an entry point for other crimes, especially exploitation or trafficking in persons. Some trafficked persons begin their journey to be illegally smuggled into the country of destination, but unfortunately they end up being tortured, violent, or forced into situations of exploitation. For example, they are forced to work for a minimum wage just enough for transportation. For smugglers, these smuggled people are potential victims to be sold to others at a fair cost. The smugglers lie to these smugglers about their true motives and for the people who are smuggled exploitation and the costs they incur is a process that must be experienced to get the money.¹⁵ People smuggling, or people smuggling, is a form of crime that is directly or indirectly related to other transnational crimes, such as drug trafficking, trafficking in persons and terrorism. This interest needs to be watched out for considering the rampant drug trafficking cases, and the vulnerable security situation of immigrants, so that it can also be an indication of their involvement in acts of terrorism that criticize national security.¹⁶

*People smuggling and illegal immigrants are interrelated crimes. These crimes can occur if one of them can be realized, in the sense that illegal immigrants will succeed with the conspiracies of smuggling agents, and people smuggling results in an increasing number of illegal immigrants.*¹⁷

It is important to know that illegal immigrants are not perpetrators of people smuggling acts carried out by international organizations, but there are also immigrants who themselves immigrate through illegal channels.

¹⁴ Romli Atmasasmita, Pengantar Hukum Pidana Internasional, (Bnadung, Refika Aditama, 2000), h. 46-47

¹⁵ Yusnarida Eka Nizmi, Memahami Problematika Dua Kejahatan Transnasional: Perdagangan dan Penyelundupan Orang di Cina, jurnal Global &Strategis, Th. 10, No. 2, h. 172

¹⁶ IOM, Petunjuk Operasional Penanganan Tindak Pidana Penyelundupan Manusia “Pencegatan, Penyidikan, Penuntutan dan Koordinasi di Indinesa (2012)”, (Jakarta, IOM, 2012), h. 79.

¹⁷ Sam Fernando, “Politik Hukum Pemerintah (Direktorat Jenderal Imigrasi) Dalam Menanggulangi Masalah Penyelundupan Manusia, dalam Jurnal Fakultas Hukum Universitas Brawijaya, Malang, 2013, h. 5

¹¹ P. A. F. Lamintang, Dasar-Dasar Hukum Pidana Indonesia, (Bandung, Citra Aditya Bakti, 1997), h. 34

¹² Sianturi. S. R., Asas-Asas Hukum Pidana di Indonesia dan Penerapannya, (Jakarta, Alumni, 1982), h. 211, h. 209.

¹³ *Ibid.* Hlm 27.

Criminologists also study fraud against immigrants, though less than migration and offenders. Immigrants may be at risk of becoming victims of “regular” street crime because the environment in which they live is more conducive to committing crimes.¹⁸

In the explanation of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (the protocol against the smuggling of migrants by land, sea and air complements the UN convention against organized transnational crime) which in Article 5 The protocol states that migrants cannot be subject to criminal responsibility because they are the object of a criminal act that has been stipulated in this protocol which has been ratified by the Government of Indonesia by issuing Law No. 5 of 2009 and Law No. 15 of 2009, so that migrants cannot be made suspects.

3) Handling Transnational Organized Crime and its Relationship with Immigration

Today, crime is no longer within the territory of one country but can extend beyond the boundaries of other countries. Crimes that cross the borders of a country are known as transnational crimes, while transnational crimes within the multilateral scope are called Transnational Organized Crime (TOC). This concept was first introduced internationally in the era of the 1990s at the United Nations (UN) meeting which discussed the prevention of transnational crime.¹⁹

In the prevention and handling of Transnational Organized Crimes that occur related to Immigration, especially in the case of Human Trafficking and also People Smuggling, because the subject is the movement of people, where this is one of the immigration authorities as the agency that determines a person may enter the territory country or not.

In its own practice in handling transnational organized crime, Immigration must have preventive and repressive efforts, namely prevention before and after handling the crime of Human Trafficking and People Smuggling. These preventive measures can be in the form of:²⁰

- a) People smuggling can be implemented using a selective immigration policy. Article 13 concerning refusal to enter foreigners includes the classification of foreigners who can be refused entry into the territory of the Republic of Indonesia.
- b) It is obligatory to strengthen cooperation between border control agencies to prevent and detect migrant smuggling, to ensure that no merchant ships are misused to commit crimes of migrant smuggling and to impose sanctions for violators, deny entry or grant visas to perpetrators of these crimes.
- c) Ensure the supervision and security of the documents issued so that there is no possibility of misuse.
- d) Must check the legitimacy and validity of the identity and travel documents issued by them.

¹⁸ Mangai Natarjan, *Kejahatan dan Pengadilan Internasional*, (Bandung, Nusa Media, 2015), h. 22.

¹⁹ “Kejahatan Lintas Negara”, dalam www.kemlu.go.id/Pages/lissueDisplay.aspx?IDP=20&l=id, diakses 9 November 2019

²⁰ “People Smuggling”, dalam <http://www.interpol.int/Crime-areas/Trafficking-in-humanbeings/People-smuggling>, diakses pada 9 November 2019

- e) Safeguard and protect the rights of migrants, in particular the right to life, the right not to be abused, the right to humane treatment; assisting migrants whose lives are at risk due to these crimes; paying attention to the needs of women and children; pay attention to the Vienna Convention on Consular Relations with regard to the detention of migrants.
- f) It is obligatory to cooperate with each other in providing and strengthening information programs to increase public awareness regarding this crime of immigrant smuggling and eradicate socio-economic root causes.

Meanwhile, if a crime has occurred, repressive efforts will be carried out, namely in the form of legal protection for migrants or victims of the crime. The protection in question can be in the form of:²¹

- a) Protect the identity of the victim (confidentiality) and also ensure that the law of the country of origin regulates the provision of continuous information regarding the criminal process involving traffickers to the victim.
- b) Providing health services or counseling aimed at healing the physical or psychological condition of the victim, paying special attention to victims of trafficking who are children, including placing them in appropriate homes, providing education and care and safety for victims.
- c) As well as "facilitating and accepting" the return of victims who are citizens of a country or victims who have the legal right of residence when they are trafficked to the destination country and also provide protection to victims in the process.
- d) Conducting investigations into organized transnational crimes. People smuggling is regulated in Article 120 of Law Number 6 of 2011 concerning Immigration which is classified into immigration crimes.

According to international law, to these 2 crimes, several principles can be applied in their handling, including:²²

- a) The principle of non-refoulement: this principle is specifically contained in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. This principle requires that there be no forced repatriation of migrants, unless they wish/are willing to be repatriated voluntarily. So the victims of Human Trafficking should not be forcibly returned to their countries of origin.
- b) The principle of non-discriminatory, this protocol is implemented without discrimination against all migrants who are the object of criminal acts that have been regulated in UNTOC.

Immigration relations in preventing and dealing with the Crime of Trafficking in Persons and People Smuggling, as described above, particularly in the border area, conduct surveillance, security and detection of people suspected of committing these crimes In addition, by checking the originality and validity of the travel documents of people who will enter the territory of the country.

²¹ “Penanggulangan Kejahatan Lintas Negara Terorganisir” dalam <http://www.kemlu.go.id/kebijakan/isu-khusus/pages/Penanggulangan-Kejahatan-LintasNegara-Terorganisir.aspx>, diakses 9 November 2019

²² Art.19 United Nations Convention Against Transnational Organized Crime

3. Conclusion

Along with the swift flow of human mobility. So criminal acts also develop with a fairly broad range, namely between countries. Because of the crimes that occur in several countries, it requires cooperation between countries to combat Transnational Organized Crime. One of the criminal acts that occur today is people smuggling or people smuggling.

The thing that underlies the occurrence of this crime in terms of criminology is related to economic motives, where human needs are not proportional to economic capacity. So that in order to meet these unlimited needs, an action is taken to meet these economic needs in a way that violates the norms. Because the locus of human smuggling occurs between countries, there is a role for Immigration in handling it. Both in preventive and repressive efforts. Because Immigration is the leading agency for crossing people who will enter and leave a country, so that Immigration's active role is needed in handling human smuggling crimes.

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