

The Business Crime in The Use of Foreign Labor In Indonesia Perspective of People Smuggling

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Abstract

The purpose of this study is to analyze the legal regulations in Indonesia regarding the use of foreign workers in connection with the criminal offense of human smuggling, as well as to examine the enforcement of the law against business actors who illegally employ foreign workers from the perspective of human smuggling. This research uses a normative legal approach by reviewing legislation, court decisions, and legal doctrines through statutory, case, and conceptual approaches, along with library research techniques and descriptive-analytical qualitative data analysis. The findings indicate that legal regulations in Indonesia concerning the use of foreign workers linked to human smuggling are covered by various laws such as the Manpower Act, the Immigration Act, and the Anti-Trafficking Law (UU TPPO), but remain partial and do not explicitly regulate smuggling in the context of corporations as perpetrators, which hinders legal enforcement. Law enforcement against such business crimes still faces multiple obstacles, such as weak legal frameworks, operational modes disguised as legal recruitment, limited understanding among law enforcement officials regarding transnational crimes, and the suboptimal implementation of corporate criminal liability, resulting in many cases ending only in administrative sanctions such as deportation, without significant deterrent effects

1. Introduction

In the increasingly dynamic era of globalization, cross-border labor mobility has become a defining characteristic of global economic development. The movement of workers from one country to another is driven not only by labor market demand but also by differences in economic, social, and political conditions between the origin and destination countries. (Sumartik & Ambarwati, 2023) Indonesia, as a developing nation strategically located in Southeast Asia, is also part of the international migration flow, acting as both a sending, receiving, and transit country for foreign workers. On the one hand, the presence of foreign workers can help fill skill gaps in strategic sectors such as construction, energy, mining, manufacturing, and information technology. (Firmansyah, 2024) However, on the other hand, the practice of employing foreign workers is not without its legal loopholes, making it vulnerable to exploitation and transnational crimes such as human trafficking.

The phenomenon of illegal foreign workers entering Indonesia is not new. In recent years, numerous reports and findings from media and oversight agencies have revealed practices of recruiting foreign workers without official permits, document forgery, using tourist visas for work, and exploitation of foreign workers entering Indonesia through unauthorized channels. Such practices are often disguised as legitimate business activities on the surface, yet harbor serious legal violations underneath. (Kurniawan et al., 2024) This has given rise to the term "business crime" in the context of foreign worker employment, referring to the use of business structures and mechanisms to commit acts that are legally classified as crimes, in this case, human trafficking.

Human smuggling is a form of transnational crime that has become a matter of international concern. According to the 2000 UN Protocol against the Smuggling of Migrants by Land, Sea and Air, human smuggling is defined as the act of assisting someone to enter a country illegally with the aim of obtaining financial or material gain. (Lilipaly et al., 2023) In the Indonesian context, human smuggling is often linked to human trafficking, although conceptually and in terms of purpose, the two crimes have fundamental differences. While human trafficking aims at exploitation, human smuggling primarily focuses on violations of immigration law. (Dudy & Ashady, 2024) However, in practice, these two phenomena often overlap and reinforce each other.

Business crime in the smuggling of foreign workers becomes even more complex because it involves various actors, both domestic and foreign (Kurniawan et al., 2025). The perpetrators are not only illegal employment agencies or brokers, but also include large companies, government officials, and even corrupt law enforcement officers.(Utami, 2019) In many cases, large companies recruit foreign workers through illegal channels to avoid bureaucratic processes and what they perceive as high legal costs. They exploit loopholes in regulations and weak government oversight to bring foreign workers into the country with improper documentation. In several instances, foreign workers who enter through smuggling work without legal protection, do not receive fair wages, lack access to social security, and live in inhumane working conditions.

One of the main reasons why this practice persists is the strong economic motive on the part of employers. Employing illegal foreign workers is often considered cheaper than employing local workers or legal foreign workers. This is due to the lack of obligation to pay allowances, BPJS contributions, or other employment taxes for illegal foreign workers. For employers who are only focused on short-term profits, this is a very tempting loophole. Furthermore, weak law enforcement against violations involving illegal foreign workers increases the chances of this crime continuing to thrive. Weak legal sanctions, slow legal processes, and the existence of bribery and corruption in labor and immigration oversight make this crime increasingly difficult to eradicate.(Ramadhano & Lie, 2023)

From a regulatory standpoint, Indonesia actually has various legal instruments governing the use of foreign workers. Law Number 13 of 2003 concerning Manpower, as amended by Law Number 11 of 2020 concerning Job Creation, provides the legal basis for the involvement of foreign workers in the Indonesian labor market. Furthermore, Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers and various derivative ministerial regulations explain the procedures and administrative requirements that companies must fulfill to employ foreign workers.(Flambonita & Kuspraningrum, 2023) However, in practice, these regulations are often not consistently enforced, mainly due to weak field supervision, a lack of coordination between agencies such as the Ministry of Manpower, Immigration, and the Police, and low legal awareness among business actors.

Law enforcement against human smuggling in the form of business crime also faces serious challenges in terms of evidence and prosecution. These crimes tend to be

clandestine and difficult to detect because they are packaged within legitimate business activities. Furthermore, because they involve cross-border actors, the investigation and prosecution process is often hampered by jurisdictional limitations, a lack of international cooperation, and the difficulty of gathering evidence in the workers' countries of origin.(Umboh, 2024) In many cases, the victims are even reluctant to testify for fear of deportation or pressure from the recruiters. Therefore, this crime requires a comprehensive approach to handling it, including strengthening international cooperation, special training for law enforcement officers, and protection for witnesses and victims.

From a criminological perspective, this crime falls into the category of white-collar crime, that is, crimes committed by individuals or groups who have a position, power, and access to the legal and economic system. In this case, the perpetrators are not ordinary street criminals, but businessmen, recruitment agents, and even officials who systematically violate the law for personal gain. White-collar crime often escapes public attention because it does not directly cause physical violence, even though its economic impact is far greater and more systemic. This crime also shows an imbalance in the legal system, where powerful perpetrators are often more difficult to prosecute than perpetrators from lower social classes.(Eleanora, 2013)

Overall, it can be understood that business crime in the use of foreign workers from the perspective of human smuggling is a complex and multidimensional issue. It not only involves criminal law aspects but also labor, social, economic, political, and human rights aspects. Therefore, synergy between various parties, including the government, the private sector, civil society organizations, and the international community, is needed to comprehensively address this problem. Based on the background explanation above, the author is interested in conducting research entitled "The Role of Criminal Law in Addressing Business Crime in the Agrarian Sector: A Case Study of Illegal Land Right Transfers". The research problems are:

- 1) What are the legal regulations in Indonesia regarding the use of foreign workers in connection with the crime of people smuggling?
- 2) How is the law enforced against perpetrators of business crimes who use foreign workers illegally from the perspective of people smuggling crimes?

In recent years, the issue of illegal foreign worker (FW) employment in Indonesia has become a serious concern among various groups, including the government, academics, and the general public. This phenomenon not only raises

labor issues but is also closely related to human smuggling, a form of transnational crime. Previous studies have attempted to examine various aspects related to illegal FW employment and its implications for law and policy in Indonesia. However, research specifically focusing on the link between business crime in illegal FW employment and the perspective of human smuggling remains limited.

One of the relevant studies is a study conducted by (Helian, 2022) a study from Kristen Indonesia University, titled "Supervision of Foreign Worker Law Violations in Indonesia," published in December 2022, highlights the prevalence of illegal foreign worker employment and the misuse of immigration and work permits in Indonesia. The research emphasizes the crucial role of the state in supervising and preventing illegal foreign workers and identifies sanctions applicable to such violations. While this study provides a general overview of legal violations related to foreign workers, its primary focus is on administrative supervision and law enforcement aspects, without delving deeply into its connection to human smuggling.(Helian, 2022)

Furthermore, research by Nevey Varida Ariani, published in the De Jure Law Research Journal in March 2018, titled "Law Enforcement Against Illegal Foreign Workers in Indonesia," discusses the mechanism of law enforcement against illegal foreign workers from the perspectives of labor and immigration law. Ariani outlines various administrative and criminal sanctions that can be applied to violations involving illegal foreign workers. However, this research focuses more on domestic law enforcement aspects and has not yet integrated an analysis of the link between the use of illegal foreign workers and transnational human smuggling networks.(Ariani, 2018)

Another study by Riska Anggraeny and Deddy Effendy from Bandung Islamic University, titled "Law Enforcement Against Illegal Foreign Workers at PT X Tangerang Viewed from the Minister of Manpower Regulation Number 10 of 2018 Concerning the Procedure for the Use of Foreign Workers in Relation to Law Number 13 of 2003 Concerning Manpower," published in the Proceedings of Legal Studies in August 2019, examines a specific case at PT X Tangerang concerning the use of illegal foreign workers. This research analyzes the inconsistencies between company practices and existing regulations and highlights the importance of more effective supervision. While providing insight into the implementation of regulations at the company level, this study does not explicitly examine the dimension of human smuggling in the context of illegal foreign worker use.(Anggraeny & Effendy, 2019)

Research by Rezal Ardianto Nugroho from Semarang State University, titled "Supervision and Law Enforcement Against Illegal Foreign Workers in the Special Region of Yogyakarta," completed in 2020, highlights the role of local government in supervising and enforcing laws against illegal foreign workers. Nugroho emphasizes the importance of inter-agency coordination and community involvement in supervision. However, this research focuses more on the aspects of supervision at the local level and does not thoroughly discuss the connection with human trafficking crimes.(Nugroho, 2020)

Beyond academic research, a March 2023 report from the Indonesian Migrant Workers Protection Agency (BP2MI) states that the illegal sending of migrant workers abroad is an extraordinary crime carried out systematically and organizedly, involving various parties, including individuals within ministries.(Mahrofi, 2023) This report highlights the complexity of the networks involved in the illegal dispatch of migrant workers, but focuses more on Indonesian migrant workers sent abroad, rather than on the use of illegal foreign workers in Indonesia.(Aminudin, 2024)

The preceding research and reports conclude that while studies on illegal foreign worker (FW) use and law enforcement exist in Indonesia, a gap remains in the literature specifically examining the link between business crime in illegal FW use and the perspective of human smuggling. Existing research tends to focus on supervision, administrative law enforcement, and case studies at the local or company level, without integrating in-depth analysis of how illegal business practices involving FWs can be categorized as part of a broader human smuggling network.

Therefore, this proposed research offers significant novelty compared to previous studies. This novelty lies in a more comprehensive and integrated approach to the phenomenon of illegal foreign worker employment in Indonesia. It moves beyond merely examining administrative violations, analyzing it within the framework of organized and transnational business crime, particularly in relation to human smuggling.

This research adopts an interdisciplinary approach, combining perspectives from criminal law, labor law, immigration law, and criminology. Previous research often discussed illegal foreign worker issues solely within the context of administrative or labor law, such as visa or work permit violations. This research delves deeper, examining how illegal FW use by businesses can be qualified as a more serious crime: human smuggling. This approach allows for broader legal analysis, encompassing

criminal provisions in Law Number 21 of 2007 on the Eradication of Trafficking in Persons and Law Number 6 of 2011 on Immigration, and the relevant roles of cross-sectoral law enforcement agencies.

Another novelty lies in the attempt to uncover and analyze the organized crime networks involved in these illegal business practices. Illegal FW use is not solely undertaken by individuals; it often involves corporations, employment agencies, and even officials who abuse their authority. This research will trace the patterns of relationships between actors within these networks, examining recruitment and smuggling processes, and how they camouflage themselves within Indonesia's legal and bureaucratic systems. This aspect has been largely unexplored in previous research, which only superficially addresses the legality of foreign workers without delving into the more complex structure of criminal economics.

Further novelty lies in the analysis of policy implications and law enforcement based on the findings. This research aims not only to uncover the modus operandi and perpetrators behind illegal FW use, but also to formulate evidence-based policy recommendations for stakeholders to develop strategies for combating human smuggling through corporate criminal law and strengthening cross-sectoral supervisory systems. By proposing policy integration between the Ministry of Manpower, Immigration, the Police, and the National Agency for the Countermeasures of Trafficking in Persons (BNPTTPO), it is hoped that handling this crime will no longer be solely sectoral and administrative.

Overall, this research presents a new perspective on the study of illegal foreign workers in Indonesia, framing the issue within a broader legal context as part of a complex transnational crime. This approach is expected to enrich the literature on criminal and business law, while also providing a strategic foundation for reforming labor and immigration policies in Indonesia. The uniqueness of this research lies not only in its specific subject matter but also in its progressive legal approach used to dissect the root causes and offer comprehensive and applicable solutions.

2. Research Method

This research employs a normative legal research approach. Normative legal research is a method that focuses on the study of legal documents and materials as the primary source for systematically, logically, and coherently examining legal

issues.(Marzuki, 2017) In the context of this research, a normative approach is used to analyze legislation governing foreign workers, criminal law, and regulations on human trafficking, with the aim of finding clarity in the norms and regulations applicable to business crimes in the use of illegal foreign workers in Indonesia.

The approaches used in this research include several legal approaches, namely the statutory approach, the case approach, and the conceptual approach.(Muhaimin, 2020) The statutory approach examines relevant laws, including Law No. 13 of 2003 on Manpower, Law No. 6 of 2011 on Immigration, and Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes. This identifies legal norms relevant to crimes involving illegal foreign workers. The case approach analyzes court decisions on illegal foreign workers and human trafficking, illustrating practical legal application. The conceptual approach examines legal doctrines and expert opinions on business crime, human trafficking, and corporate criminal liability.

The research uses three types of legal materials: primary, secondary, and tertiary sources.(Ali, 2010) Primary legal materials include relevant legislation such as the 1945 Constitution of the Republic of Indonesia, Law No. 13 of 2003 on Manpower, Law No. 6 of 2011 on Immigration, Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes, and their implementing regulations (e.g., Ministerial Regulations on Manpower and Regulations of the Director General of Immigration). Primary materials also encompass court decisions related to illegal foreign worker cases and human trafficking. Secondary legal materials consist of legal literature, textbooks, scientific journals, previous research, and legal articles providing explanations and interpretations of primary legal materials. Tertiary legal materials, such as legal dictionaries and encyclopedias, support the research by clarifying legal terminology.

Data collection in this normative legal research is conducted through library research.(Sugiyono, 2019) This technique involves gathering legal materials through research of legal documents, legislation, scientific literature, court decisions, and other academic sources in both print and digital formats. The researcher will access national legal databases such as JDIH (Legal Documentation and Information Network), the Supreme Court's SIPP (Integrated Court Information System), and university digital libraries and scientific journal platforms to obtain relevant data. Data will also be collected through searches of official websites of relevant institutions such as the Ministry of Manpower, the Directorate General of Immigration, and the

National Agency for the Counteraction of Trafficking in Persons (BNPTTPO).

Data analysis uses a descriptive-analytic qualitative approach.(J. Moleong, 2017) Data from various legal sources will be analyzed in depth, outlining the content of norms, legal principles, and their relevance to the issue under study. The researcher will describe and interpret applicable laws, then draw conclusions based on sound legal logic and normative arguments. This systematic analysis will compare existing legal norms, identify any legal disharmonies or gaps, and argue how the law should be applied in the context of business crimes using illegal foreign workers, viewed through the lens of human trafficking. This method aims to contribute to the development of legal science and inform recommendations for more effective and responsive legal policies addressing societal problems.

3. Results And Discussion

A. Legal Regulations in Indonesia Regarding the Use of Foreign Workers Linked to the Crime of People Smuggling

In the era of globalization and rapid industrial development, Indonesia has become a primary destination for foreign workers (FWs). The influx of FWs reflects not only the openness of the national labor market to global talent but also forms part of the national development strategy to advance the industrial, technological, and service sectors. However, this phenomenon also presents complex legal issues, particularly when the use of FWs occurs outside the existing legal framework.(Erwin, 2023) One form of crime related to the illegal use of foreign workers is human trafficking (smuggling of migrants), which is now a serious concern both nationally and internationally.

This phenomenon of human trafficking through illegal employment schemes often involves organized criminal networks that exploit weaknesses in Indonesia's legal system and oversight. Cases of foreign worker smuggling are typically carried out by corporations or illegal recruitment agencies that promise high-paying jobs to individuals from countries like China, Bangladesh, and Myanmar. Upon arrival in Indonesia on tourist or visitor visas, these individuals are immediately transferred to workplaces without official authorization. Such practices clearly violate the law, but often the main perpetrators remain elusive due to regulatory limitations and weak inter-agency coordination.(Rumagit, 2022) This issue not only violates employment and immigration laws, but has entered the criminal realm, namely business crimes that have an impact on human rights violations.(Syahrin, 2019) Therefore, it is crucial to

examine how Indonesian law regulates the use of foreign workers (TKA) and how this legal framework can address human trafficking through loopholes in the employment business.

The use of TKAs in Indonesia is governed by several laws and regulations. Law Number 13 of 2003 concerning Manpower stipulates that employers employing TKAs must have written permission from the government. This law emphasizes that TKAs can only fill specific positions and must have a Foreign Worker Utilization Plan (RPTKA) approved by the Ministry of Manpower. This provision is strengthened by Law Number 11 of 2020 concerning Job Creation, which revises some provisions in the Manpower Law, and Presidential Regulation Number 20 of 2018 concerning the Use of TKAs, which technically regulates the procedures, requirements, and methods for recruiting TKAs in Indonesia.(Fithri, 2021)

Furthermore, the Minister of Manpower Regulation Number 8 of 2021 concerning the Procedures for the Use of Foreign Workers clarifies that foreign workers must possess a work permit, limited stay permit, and meet the requirements as skilled or expert workers. The government also mandates employers to conduct knowledge transfer to Indonesian workers as a form of compensation. Violations of these regulations are subject to administrative sanctions, including revocation of work permits or deportation of illegal foreign workers.(Sulaiman, 2024)

However, in practice, these regulations have not been able to prevent the entry of illegal foreign workers. Many companies or agencies recruit foreign workers without fulfilling the administrative requirements or deliberately misuse visit visas to bring workers into Indonesia illegally. These methods create opportunities for human trafficking because foreign workers are brought into Indonesia through means that violate immigration and labor laws.(Erwin, 2023)

Human smuggling is a form of transnational crime governed by the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, an additional protocol to the United Nations Convention Against Transnational Organized Crime (UNTOC). Indonesia has ratified this convention and its additional protocol through Law Number 5 of 2009.(Lilipaly et al., 2023) However, to date, Indonesia does not have a specific law explicitly regulating the crime of human smuggling as defined in the protocol.

Generally, human smuggling is defined as assisting someone to enter or leave a country without following legal procedures, usually for financial or other material

gain. Unlike human trafficking, which involves exploitation, human smuggling emphasizes the illegal crossing of national borders through an agreement between the smuggler and the victim.(Campana, 2020) However, in practice, these two crimes often overlap. In many cases of smuggled foreign workers, they are not only smuggled illegally but also economically exploited, working without fair wages, enduring long working hours, and lacking social protection.

Due to the lack of a specific law, Indonesia relies on several provisions in other laws to prosecute human smuggling. One of these is Law Number 6 of 2011 concerning Immigration, specifically Article 120, which states that anyone who intentionally provides an opportunity for a foreigner to enter or leave Indonesian territory illegally can be subject to a maximum prison sentence of 15 years and a maximum fine of Rp 1.5 billion. This provision is the main basis for law enforcement against human smuggling, including illegal foreign workers.(Salam, 2020)

Furthermore, there are provisions in Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons, which is often used in practice in cases of smuggled foreign workers that lead to exploitation. Although different in definition, in Indonesian legal practice, smuggling and trafficking in persons are often handled with a similar approach due to the difficulty of clearly distinguishing between them in the field.(Suwarno et al., 2018) However, using these articles is insufficient to prosecute criminal syndicates that smuggle foreign workers into Indonesia. The lack of regulations concerning corporations as perpetrators of human smuggling makes it difficult for law enforcement to prosecute companies that are the main perpetrators of this practice. As a result, many cases only end with the deportation of illegal foreign workers, without legal proceedings against the recruiters or those who use their services.

In the context of business crime, human smuggling is not only committed by individuals but also involves legal entities or corporations. This crime is systematic, organized, and utilizes a legitimate business framework to commit illegal acts.(Denley et al., 2024) Therefore, it is crucial for the Indonesian legal system to begin implementing the principle of corporate criminal liability. While the current Criminal Code (KUHP) and the new draft Criminal Code (RUU KUHP) include provisions for corporate criminal liability, their implementation remains very limited, especially in the context of human smuggling.

By recognizing corporations as criminal legal subjects, companies that smuggle

foreign workers can be subject to criminal sanctions such as fines, revocation of licenses, and even dissolution. However, this requires strong legal norms and a good understanding by law enforcement officers regarding the proof of corporate culpability and the legal relationship between the actions of individuals and corporate entities.(Martha & Suartha, 2018)

Despite Indonesia having various regulations, the main challenges lie in implementation and inter-agency coordination. Oversight of foreign worker use involves various institutions such as the Ministry of Manpower, the Directorate General of Immigration, the Police, and local governments. Weak coordination and overlapping authority are often exploited by perpetrators to evade the law.

Furthermore, a weak data and monitoring system for foreign worker work permits makes supervision difficult. Many companies use unofficial employment agencies and hide the presence of foreign workers from government oversight. Digital technology, which should be used to monitor the movement and work permits of foreign workers, is not yet optimally utilized, thus creating opportunities for illegal practices.(Rumainur, 2017)

Indonesia's legal framework regarding the use of foreign workers in the context of human smuggling remains fragmented and ineffective in its enforcement. A comprehensive effort is needed to create a special law on human smuggling that can serve as a strong legal basis for prosecuting smuggling through business channels. Furthermore, regulations on corporate criminal liability need strengthening, along with increased capacity for law enforcement to prove transnational crimes. Inter-agency coordination needs to be strengthened through an integrated digital system for monitoring foreign workers and law enforcement. In addition, international cooperation in intelligence, data exchange, and extradition should be expanded to dismantle cross-border smuggling networks. Finally, the protection of victims of human smuggling must be prioritized in every step of law enforcement, in line with Indonesia's commitment to human rights and international conventions.

B. Law Enforcement Against Business Crime Perpetrators Who Use Foreign Workers Illegally From the Perspective of People Smuggling Crimes

In the era of economic globalization and increasingly open international labor mobility, Indonesia has become both a destination and a transit point for foreign workers.(Chattoraj & Ullah, 2023) The influx of foreign workers (FWs) not only brings

positive impacts in the form of knowledge transfer and increased productivity but also gives rise to serious legal challenges related to labor exploitation, administrative violations, and even transnational crimes such as human smuggling. The illegal use of FWs in practice is often not merely an administrative violation but has evolved into a complex and organized form of business crime. This is increasingly worrisome when the main perpetrators are corporate entities or individuals who conduct formal business activities but engage in illegal and exploitative practices behind the scenes.

Human smuggling itself is defined as the act of facilitating the illegal entry of a person into a country, with the aim of obtaining financial or material gain. Although Indonesia has ratified the UN Protocol against the Smuggling of Migrants by Land, Sea and Air through Law Number 15 of 2009, to date Indonesia does not have a single special law that explicitly regulates the crime of human smuggling in the context of labor migration. Consequently, law enforcement against this crime still relies on various scattered legal provisions, such as in the Immigration Law, the Labor Law, and the Law on Trafficking in Persons (TPPO). (Lilipaly et al., 2023) This creates a unique challenge in constructing indictments and ensuring effective law enforcement.

Law enforcement against business criminals who use FWs illegally cannot be separated from the characteristics of the crimes they commit. Unlike conventional crimes, business crimes are characterized by perpetrators who have high economic and social standing, use legal and administrative instruments as a cover, and are carried out with the aim of financial gain. (Firmansyah, 2024) In many cases, the smuggling of FWs is carried out by corporations or employment agencies that facilitate the entry of workers without going through official procedures, either by forging documents, misusing visas, or by smuggling FWs through unofficial channels. This practice is often disguised as legal recruitment, making it difficult for law enforcement to identify.

From the perspective of positive Indonesian law, law enforcement against this crime is carried out through various approaches. First, using Article 120 of Law No. 6 of 2011 concerning Immigration, which states that anyone who illegally enters or removes a person from and to Indonesian territory can be prosecuted. This provision has become the main legal basis for prosecuting migrant smugglers. However, the problem is that when the perpetrator is a business entity or corporation, the conventional approach becomes less effective because Indonesian criminal law is still oriented towards individuals as legal subjects. Meanwhile, corporate criminal acts are only beginning to be applied in several cases through jurisprudential approaches and

sectoral regulations such as the Anti-Money Laundering Law and the Consumer Protection Law.(Siregar et al., 2022)

Second, in the context of victim protection and legal processing of perpetrators, law enforcement officers often use Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons (TPPO). However, a clear distinction must be made between human trafficking and human smuggling. Although both are categorized as transnational crimes, TPPO requires exploitation, while human smuggling can occur without exploitation, simply involving a person entering a country illegally with the help of a third party. The use of the TPPO Law in cases of FWs smuggling can create legal uncertainty and potentially lead to errors in sentencing.(Araa et al., 2024)

Third, law enforcement is also carried out through the Manpower Law (Law No. 13 of 2003) and its derivative regulations, especially those regulating permits for the use of FWs (Foreign Worker Use Plan – RPTKA and Foreign Worker Employment Permit – IMTA). Unfortunately, violations of these provisions are more often subject to administrative sanctions than criminal sanctions. This causes many business criminals to consider violations of labor regulations as "operational costs" rather than a serious legal risk.(Flambonita & Kuspraningrum, 2023)

In practice, law enforcement also faces significant challenges in the evidentiary process. Human smuggling in a business context is often carried out in an organized and transnational manner, using false identities, misused tourist visas, and involving corrupt officials. Proving the perpetrator's criminal intent (*mens rea*) and corporate involvement is very difficult, especially if documents have been falsified or digital evidence deleted. On the other hand, law enforcement agencies do not yet fully understand the concept of corporate criminal liability and lack adequate technical guidelines for its implementation.(Septian & Pratama, 2019)

The cases of illegal FWs smuggling that have been successfully uncovered generally only involve catching victims or field perpetrators, such as brokers and escorts, while the masterminds or large corporations often escape legal prosecution. For example, in the case of the smuggling of dozens of Chinese FWs to the Morowali industrial area, who worked without permits and work visas, only deportation was imposed, while the employing companies were not subject to criminal sanctions, only warnings and administrative fines. This demonstrates the weak coercive power of the law in prosecuting the main perpetrators of business crimes.

Effective law enforcement against this crime requires cross-agency cooperation, including the Directorate General of Immigration, the Ministry of Manpower, the Police, the Prosecutor's Office, and even the Corruption Eradication Commission (KPK) if bribery is involved. It is not enough to only use a criminal law approach, but also requires reform of labor policies and a more transparent and integrated FWs licensing system. The digitalization of FWs supervision through applications such as TKA Online needs to be integrated with immigration and police systems to allow early detection of potential smuggling.(Darmawati, 2020)

Furthermore, it is crucial to revise legislation to provide a stronger legal basis for criminalizing human smuggling in a business context. The establishment of a law on human smuggling, or a Migrant Smuggling Act, could be a strategic solution to clarify the regulations and distinguish between smuggling and trafficking. This draft law should also affirm the mechanisms for taking action against corporations as primary perpetrators and the forms of criminal liability that can be imposed, including fines, revocation of business licenses, and additional penalties such as victim restitution. Law enforcement should also be directed toward a human rights-based approach and victim protection, particularly for FWs who are actually victims of smuggling, not perpetrators. Many foreign workers are promised decent jobs, but in reality, they are forced to work, exploited, and lack access to legal services. The state has an obligation to protect their fundamental rights in accordance with the principles of non-refoulement and due process of law.(Maghfiroh & Nurmawati, 2023)

In the context of international law implementation, Indonesia also needs to strengthen international cooperation for transnational law enforcement. Human smuggling involves transnational networks, so enforcement requires assistance such as extradition, intelligence data exchange, and mutual legal assistance (MLA). As a member of ASEAN, Indonesia must also actively implement its commitments under the ASEAN Convention Against Trafficking in Persons (ACTIP) and adopt the principles of the Global Compact for Safe, Orderly and Regular Migration.(Wahyuningtyas, 2016)

To enhance the capacity of law enforcement, specialized training on human smuggling offenses, corporations as criminal actors, and transnational crime investigation techniques needs to be expanded. Law enforcement officers need to be trained to distinguish between ordinary illegal migrants and victims of smuggling, and to understand the mechanisms of corporate criminal liability and the liability of other

involved third parties.(Saputra et al., 2024) From a judicial standpoint, courts must also be bold in imposing severe penalties on corporations that engage in these crimes. Courts should not only consider formal administrative violations but must explore the values of substantive justice and the social impact of FWs smuggling practices. Light sentences or mere fines will eliminate the deterrent effect and risk exacerbating the situation.(Abdulahanaa, 2018)

Law enforcement against business criminals who use illegal foreign labor in the context of human smuggling poses a serious challenge to Indonesia's legal system. Legal reform, a multidisciplinary approach, and the courage to prosecute corporations as primary actors are necessary. Criminal law must be used decisively to break the chain of this crime, with justice and the protection of human rights as the primary foundation..(Salam, 2020) Going forward, Indonesia needs to immediately draft a law on human smuggling, strengthen the FWs supervision system, and improve the capacity and integrity of law enforcement agencies. Only in this way can Indonesia demonstrate its commitment to eradicating migrant exploitation-based business crimes and upholding the rule of law amidst increasingly complex globalization.(Haris, 2020)

4. Conclusion

Indonesia's legal framework regarding the use of foreign workers (FWs) in relation to human smuggling offenses is currently fragmented across various regulations. Laws such as the Manpower Law (Law No. 13 of 2003), the Job Creation Law (UU Cipta Kerja), Presidential Regulation No. 20 of 2018, and Ministerial Regulation of Manpower No. 8 of 2021 mandate official permits and a Foreign Worker Usage Plan (RPTKA) for companies employing FWs. Concerning human smuggling specifically, Indonesia refers to Immigration Law No. 6 of 2011 (particularly Article 120, criminalizing assistance in the illegal entry or exit of foreigners) and Law No. 21 of 2007 on the Eradication of Trafficking in Persons (TPPO).

However, these regulations are piecemeal and lack explicit provisions for human smuggling as a specific crime, especially when corporations are involved. Despite ratifying the UN Protocol against the Smuggling of Migrants, Indonesia lacks a comprehensive national law adopting these international provisions. Consequently, many FWs smuggling cases end with deportation without legal proceedings against the main perpetrators.

Enforcing the law against business criminals using illegal FWs within the context of human smuggling is complex due to corporate involvement, weak legal frameworks, and limited law enforcement capacity. While Indonesia has ratified international protocols and has relevant laws (Immigration Law, Manpower Law, and TPPO Law), no single regulation explicitly addresses human smuggling in the context of illegal FW use by businesses. This hinders the prosecution in building strong indictments. Many corporate or legal agents disguise smuggling as legitimate recruitment, employing tactics like document forgery, tourist visas, and unofficial channels, making detection and proof difficult. Penalties are often administrative (fines or deportation) rather than criminal, lacking a deterrent effect. Inadequate corporate criminal liability, limited understanding of transnational crime concepts by officials, and insufficient inter-agency synergy further hinder eradication efforts.

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