The Criminal Act of Smuggling Indonesian Workers Abroad, Human Smuggling Perspective

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Abstract
The business, as usual, of work-carrying can’t be isolated from the issues of interest and supply. The bootleggers will work with the individuals who can pay, then, at that point, find go-betweens, then, at that point, transport skippers and individuals who will make counterfeit reports if essential. The humanistic lawful exploration strategy is an overview, in particular an examination that takes information straightforwardly from respondents involving interviews as an information assortment device, and afterward the information taken is handled so determinations are made utilizing a logical technique. In the mean time, assuming we take a gander at its tendency, this exploration is illustrative, specifically research that makes sense of in clear and itemized sentences the two issue definitions examined. Illegal exploitation is a type of transnational coordinated wrongdoing that can possibly have different ramifications for different violations. Human carrying can be a shortcoming of a country’s general set of laws in dealing with instances of stowed-away inspiration by outsiders to make their country a go-between country for that nation’s violations. Different violations might emerge because of human carelessness in completing the act of illegal exploitation, like regular wrongdoings (extortion, assault, murder, and robbery), transportation, illegal exploitation, tax evasion, banking wrongdoings, and psychological warfare.
I. Introduction

Law is often understood by society as a set of rules made by the state and binding on its citizens, with the mechanism of sanctions as a coercive force to enforce its laws. The state has the right to force the enactment of laws where the perpetrator is declared guilty by a court decision that has permanent legal force. What is clear is that it needs to be understood that the aim of the law is to create peace based on harmony between order and tranquility. This legal objective will, of course, be achieved if it is supported by legal duties, namely harmony between legal certainty and legal proportionality, so that it will produce justice (Prasetyo, 2010).

Upholding the supremacy of the law in social life nation and state, it can be interpreted that the law plays a role as a regulator of human life, and efforts to realize this are certainly not easy because not only the national legal system must be built and put in order but also the law enforcement apparatus. Special respect is paid to the supremacy of law with the aim of encouraging development at this time to form law in the sense of legislation, but it is necessary to remember how the law is actually formed and can be enforced in a positive way. The law is said to be a means of movement if it is able to be accepted as a system that lives and develops in society, so that the implementation of the law and the enactment of the law cannot be said to be coercive. The rule of law itself will mean a lot if law enforcement runs smoothly responsive. From the brief explanation above, we need to know that the supremacy of law is important for the state; therefore, it is also important that we know clearly what the meaning of the supremacy of law specifically is (Marpaung, 2005).

Law enforcement is an effort to uphold norms; for this reason, law enforcers must really understand the fundamental legal spirit of the legal regulations that must be enforced. In this case, it will be related to the various dynamics that occur in the process of making laws and regulations (the law-making process) (Arief, 2011). On the other hand, in the process of making legislative regulations, there is a balance and harmony between the legal awareness instilled from above by the authorities and the spontaneous legal feelings of the people. Muladi further said that ideal law enforcement should be joined by mindfulness, that policing is a social sub-framework, and that ecological impacts are very huge; for example, the impact of political, financial, and socio-social turns of events, guard and security, science and innovation, schooling, and soon (Suroso, 2016).

It is often difficult to differentiate between human trafficking and human smuggling. We only know that these two crimes are closely related to the world of population migration. We can only interpret it as a form of deviation from migration management, whether it occurs within the country or across borders between countries. These two crimes have similarities in legal aspects, namely process, methods, and objectives, of which these three aspects require legal proof. In Malaysia, for example, many people enter the country without going through immigration gates or usually using boats. The terms people smuggling and human trafficking are often
used in reporting on the migrant crisis. What's the difference between the two? Human smuggling generally refers to the act of importing foreign nationals into destination countries in ways that are not in accordance with immigration regulations (Bakker & Pratama, 2020).

In the process, smuggled people (smuggled migrants) usually rewards the smuggler. In other words, the person being smuggled carries out his actions consciously and knows the consequences of his actions. Human smuggling practices often occur among asylum seekers. To enter Australia, for example, a group of South Asian asylum seekers paid captain to take them to Christmas Island from Pelabuhan Ratu across the Indian Ocean. They tried to enter Australian territory without a visa, without even having any proof of identity. In the interim, illegal exploitation alludes to the demonstration of enlisting, sending, moving, holding onto, or getting individuals to the point of abuse, by and large joined by dangers, the utilization of savagery, or different types of pressure (Kurniadi & Qomarudin, 2022).

Human trafficking often occurs in the context of the recruitment of migrant workers. A teenager is offered a job opportunity in a restaurant in country A, for example, but at the end of the story, he is trapped as a commercial sex worker in country B. The teenager is deceived and does not do it voluntarily. Although different, both human smuggling and human trafficking are carried out by international crime syndicates. And both are equally inhumane. The writer often reads news about boats containing asylum seekers sinking in the middle of the ocean. They paid a high price but were cheated. They didn't get a good ship but a small, rotten wooden boat. Meanwhile, human trafficking often ends in human tragedy: sexual exploitation, forced labor, slavery, and even the sale of body organs (Bagaskara, 2023).

TKI is each Indonesian resident who meets the prerequisites to work abroad in a business relationship for a specific timeframe and gets compensation. In the mean time, as per the administrative manual for Indonesian work administration organizations, Indonesian residents are all kinds of people who complete exercises in the financial, social, logical, imaginative, and elite athletic fields and participate in work preparation abroad, whether ashore, ocean, or air, inside a specific timeframe in view of a work understanding, in particular an understanding among laborers and businesses orally as well as recorded as a hard copy, either for a specific time frame or for an unknown time frame, containing work conditions, freedoms, and commitments of the gatherings. With this work agreement, TKI will be better protected if, in the future, the employer or the company where the TKI works defaults. The TKI can then decide according to the work agreement that was previously made (Aini, 2019). Therefore, optimal law enforcement is needed in efforts to overcome this crime of smuggling so that no more victims fall, but according to the writing, it is partial, will in general be inadequate, and a long way from a feeling of equity thinking about that the culprit and casualty are both doing a shrewd scheme to When this criminal demonstration of sneaking is completed, it tends to be seen that the culprit and the casualty cooperate, so the casualty can travel to another country and work there unlawfully. (Hutapea, 2022).
2. Research Method

This examination is delegated humanistic lawful exploration, in particular analyzing relevant legitimate arrangements and what occurs as a general rule in the public eye, or, as such, research completed on genuine circumstances or genuine circumstances that happen in the public eye determined to be aware and finding current realities and information required. After the necessary information is gathered, it then, at that point, prompts the issue of distinguishing proof, which eventually prompts taking care of the issue. (Waluyo, 2008). Sociological Legal Research Obtaining data using data collection tools in the form of interviews (Warman, 2015). Meanwhile, if we look at its nature, this writing is analytical-descriptive, which means the research is intended to provide a detailed, clear, and systematic picture of the main research problem. Soerjono Soekanto and Sri Pamudji stated that descriptive research is research that aims to provide data as precisely as possible about people, conditions, or other symptoms with the aim of confirming a hypothesis, strengthening a theory, or developing new theories (Soekanto, 2007).

After all the data is obtained and collected, both primary and secondary, these data are grouped based on the type of the two main problems studied. Data obtained from interviews is presented in the form of sentence descriptions. Then it is processed and presented by comparing the field data with the opinions of experts or with the statutory regulations that are used as the legal basis for the research. Then the author draws conclusions using the inductive method, namely drawing conclusions from general matters to specific matters.

3. Results and Discussion

The Crime of Smuggling Workers Abroad

Human smuggling, according to the definition Article 3 of the 2000 UN Convention on Human Pirating is looking to get, straightforwardly or in a roundabout way, monetary or other material advantages from the unlawful section of an individual into a piece of the nation where the individual isn't a resident or has a home grant. Unlawful passage implies crossing a nation's boundaries without following the guidelines or grants expected to legitimately enter a nation's domain (Mansur & Antomarta, 2021). Labor smuggling has almost the same elements as human trafficking, namely elements of process, methods, and goals. The process element is the activity of transferring a person (the same as in human trafficking). The element of method is that there is no element of deviation from personal will or consent in the use of violence; generally, prospective migrants seek and initiate contact with smugglers themselves by realizing the goal, namely to cross a country's border illegally, while the objective element is that there is always the value of gaining financial benefits, and its implementation is for the purpose of crossing a country's
border illegally (Lubis, 2017).

The basic difference between human trafficking and labor smuggling is the nature and quality of the consent. In human trafficking, consent is obtained due to violence, coercion, or fraud, whereas in human smuggling, there is always consent for transfer. In terms of interests, human trafficking is always aimed at exploitation, whereas human smuggling is aimed at the illegal transfer of people. Judging from the idea of the connection between the individual and the facilitator/taking advantage of party, where illegal exploitation among (casualty and dealer) happens in a long-haul, consistent relationship, until the casualty is in the objective country, this relationship is still ongoing, while human smuggling between (buyer and supplier) is a short-term relationship and breaks up after the transfer activity to a country is achieved (Lubis, 2017).

Apart from the similarities, there are also differences between the two, namely that human smuggling emphasizes elements of illegality and the movement of people across borders, whereas in the case of trafficking, the most important thing is not whether the movement is geographically legal or not, but what is the focus of attention is the existence of elements of exploitation, use, and mistreatment of victims. Illegal exploitation generally involves brutality and terrorizing to keep casualties in a given circumstance, while human sneaking doesn’t necessarily utilize savagery and terrorizing. With regards to independence and opportunity, for illegal exploitation, the casualty is consistently in a powerless position, while for human carrying, the casualty is generally not excessively feeble except if it is essential for the exchange to find success. From a topographical perspective, illegal exploitation happens inside and across public lines, while human pirating happens across public boundaries. According to a record viewpoint, illegal exploitation can be lawful or unlawful, while human carrying is typically consistently unlawful, and lastly, according to a criminal point of view, for illegal exploitation there is generally an infringement of basic freedoms and the idea that the wrongdoing is perpetrated against people, though for human pirating it is a wrongdoing against a country (Fesdyanda et al., 2012).

Work sneaking is a wrongdoing since it obviously disregards the authority arrangements of the nations concerned. It has been perceived that work pirating is a demonstration that disregards common liberties and is a type of contemporary subjection. Outsiders are dealt with seriously, frequently in heartless travel conditions, stuffed in packed transport (generally boats), and deadly mishaps frequently happen. Upon landing in their objective, their unlawful status implies they are compelled to become captives to runners, who drive them to work for a really long time in the unlawful work market. Immigrants are indirectly exploited by certain parties for material gain (Salam, 2020). Human smuggling has become a very profitable business in itself. It is estimated that each year it can generate profits of five to ten million dollars. Based on these estimates, at least one million immigrants must pay an average of five to ten thousand dollars by force when crossing borders between countries. The International Organization for Migration
IOM) notes that people smuggling, which is the “dark side” of globalization, is a big business that is growing and expanding. Apart from that, human smuggling also creates its own problems for the countries where they request asylum. This also hit Indonesia (Subagyo & Wirasuta, 2013). The act of individuals carrying has expanded over the most recent couple of years, and right now, huge reports in regards to the quantity of unlawful outsiders keep on expanding in different nations, including Indonesia, which was initially a travel country but is currently an objective country. Individuals carrying can by and large happen with the assent of the individual or group who wishes to be pirated, and the most well-known purposes behind them are the chance to find a new line of work or work on their monetary status, the expectation of getting a superior life for themselves or their family, and furthermore, to leave. Avoid conflicts that occur in your home country (Heru, 2016).

The Impact of Human Smuggling in Indonesia

In many countries, immigration issues are often linked to the cause of increasing crime and disruption to state security, at the same level as criminal organizations and terrorism. Several studies suggest that first-generation immigrants typically, but not always, commit the same or a lower number of crimes than the native population. Their children and grandchildren usually, but not always, commit more crimes than non-citizens in some cases. A more extreme version states that these immigrant groups migrate with the aim of destroying the traditions of the destination countries from within and replacing these traditions with their own national values. The second perspective challenges the opinion that immigrants encourage crime. Immigrants are actually looked at. Parties who are vulnerable to being damaged by the culture and structure of the destination country, which is seen as an environment conducive to committing crimes (Natarajan, 2019). Human smuggling has become a global phenomenon that is a problem in many countries, including Indonesia. Since 1994, the United Nations Commission on Prevention and Criminal Justice has identified human smuggling as a problem in many countries, especially in source, transit, and destination countries. Failure to regulate immigration flows can be detrimental to all parties. The country of origin has lost productive forces that have the potential to develop the country, while the destination country is experiencing the burden of social problems such as unfair job competition with the local population, increased spending, and crime (Meliala, 2011).

The existence of illegal immigrants and their interactions with Indonesian citizens social and psychological impact on the conditions of illegal immigrants and residents Indonesian country. The social psychological impact of social interactions experienced by illegal immigrants and Indonesian citizens seems like lycan lead to more serious problems if not treated properly comprehensive. Departing from the objective reality that conflict experiences in the past and/or experience of experiencing discrimination, as well as in some lives in poverty in the country of origin or in a second country before entering Indonesia is a push factor for the majority of illegal immigrants immigrating. So It can be ascertained that they entered Indonesia with conditions vulnerable
psychosocial. Stress after traumatic experiences, prejudice towards outgroups, aggressive behavioral tendencies are experienced by them when entering Indonesia. This negative psychosocial condition seems to be getting worse due to negative experiences gained in traveling to the final destination country or being arrested and detained there. Indonesia the logical consequences of negative psychosocial conditions certainly affect illegal immigrants and their interactions with citizens. Indonesia and increases vulnerability to psychosocial problems. Serious psychosocial conditions certainly require serious treatment more professional. In fact, access to treatment is more professional ones are still very limited. Future impacts are expected to emerge including the increasing risky behavior of illegal immigrants as a form of efforts or activities to reduce stress (stress-relief activities), for example increased alcohol consumption and prostitution (Patmawanti, 2023).

This, of course, creates social problems that become a burden. Indonesia potential for violence carried out by illegal immigrants as an expression of frustration is very likely to occur. The enormous motivation to succeed, arriving in the main destination country to be able to improve the family’s economic situation and live safely and peacefully as desired, is likely to encourage illegal immigrants to use various efforts and opportunities (the ends justify the means) to achieve this, including committing crimes and violating existing laws or regulations in Indonesia. This is very likely to happen, especially if illegal immigrants realize that law enforcement in Indonesia is relatively low. In the context of Indonesian society, which is multicultural and tends to accept foreigners or immigrants as long as they have similarities, come from a relatively good socio-economic class, and display an attitude of respect, politeness, and friendliness, it seems likely that deep interpersonal relationships at the grass-root level will occur and persist. Positive interactions between illegal immigrants and Indonesian citizens can directly or indirectly threaten political stability and national security. This is expected to happen if ideas come in from outside that are not in accordance with the pillars of Indonesian nationality, namely Pancasila. The entry of illegal immigrants has its own social and cultural impact. Foreigners who enter wrongfully will impact the existence of Indonesian residents. This will create another culture that occasionally doesn’t match the way of life in Indonesia. Then, at that point, the following effect is the effect on public safety. Human carrying will really make weaknesses for state security and can harm the solidarity and trustworthiness of Indonesia (Junef, 2020).

**Human Smuggling Crime**

Forms of Human Smuggling Crime Human smuggling can be defined as seeking to obtain, directly or indirectly, financial or other material benefits from the illegal entry of a person into a part of the country where the person is not a citizen or has a residence permit (Fernando, 2013). Illegal entry means crossing a country’s borders without complying with the regulations or permits required to enter a country’s territory legally. Human smuggling has elements that are almost the same as human trafficking, namely, elements of process, methods, and goals. The process element is the activity of transferring a person (the same as in human trafficking). The element of method is that there is no element of deviating from personal will or using violence; generally, prospective immigrants seek and initiate contact with smugglers themselves by realizing
their goal, namely to cross a country's borders illegally. Meanwhile, the objective element is that there is always value in obtaining financial benefits, and its implementation is for the purpose of crossing state borders, which is done illegally (Wibowo, 2023).

The basic differences we can see between human trafficking and human smuggling are in the nature and quality of consent, where consent is obtained due to violence, coercion, fraud, and so on (Fadillah et al., 2022). So in this case, determining the forms of criminal acts of human smuggling and criminal acts of human trafficking are not much different because basically the perpetrators have no intention of exploiting the people being smuggled, whereas human trafficking will ultimately be exploited by the perpetrators.

From the explanation above, it is further necessary to convey that the forms of criminal acts of human smuggling are not much different from the forms of criminal acts of human trafficking.

Migrant workers are people who migrate from their birthplace to another place and then work in a new place for a relatively permanent period of time. Entertainers are people who work at nighttime entertainment venues and accommodate visitors so that they feel entertained (Asyhadie et al., 2021). Of the two forms of criminal acts of human smuggling above, in general, it is an act that can be categorized as human smuggling and is often carried out by people who want to look for work because to get this, they can make a legal document or a fake document in order to get it. entering Indonesian Territory or leaving Indonesian Territory, and of the two forms of criminal acts of human smuggling above, as long as the aim is not for exploitation, then only those two forms can be submitted (Pramono, n.d.).

As indicated by Regulation No. 21 of 2007 concerning the Destruction of the Lawbreaker Demonstration of Dealing with People Article 1 passage (1), illegal exploitation is the demonstration of selecting, shipping, holding onto, sending, moving, or getting somebody with the danger of viciousness, utilization of savagery, grabbing, constraint, falsification, extortion, maltreatment of force or a weak position, obligation servitude, or giving installments or advantages, to get the assent of an individual who has command over someone else, whether did inside nations or between nations, with the end goal of double-dealing or it being taken advantage of to bring about individuals (Kamea, 2016). There are three principal components contained in the meaning of illegal exploitation above, specifically: first, the activity component, which incorporates enrolling, shipping, moving, stowing away, or getting. Second is the component of means or techniques to control the person in question, which incorporates dangers, utilization of compulsion, different types of savagery, hijacking, duplicity, cheating, maltreatment of force or weak position, or giving or getting advantages to get endorsement from the individual who has command over the person in question. Third is the objective component, which incorporates abuse, essentially for prostitution or different types of sexual double-dealing, constrained work, subjugation, bondage, and the expulsion of substantial organs (Basri, 2012).

The meaning of a casualty in this situation is somebody who encounters mental, mental, physical, sexual, financial, as well as friendly enduring because of the wrongdoing of illegal exploitation. The meaning of double-dealing is an activity regardless of the casualty's assent that incorporates yet isn't restricted to prostitution, constrained work or administrations, subjugation or practices like subjection, persecution, extortion,
physical, sexual, or conceptive utilization of organs, unlawfully eliminating or relocating organs as well as tissue from the body, or taking advantage of an individual’s energy or capacities by one more party to get benefits, both material and insignificant. In the meantime, sexual double-dealing is any type of purpose of the casualty’s sexual organs or other real organs to acquire benefit, including but not limited to all prostitution and sexual maltreatment exercises.

4. Conclusion
The crime of labor smuggling (people smuggling) should be considered a problem that must be seriously eradicated in Indonesia because Indonesia has a strategic location, especially in waterways that border many neighboring countries. The crime of human smuggling is seen as the act of moving people from one place to another without complete files or documents to enter a legal territory. Criminal liability for perpetrators of criminal acts of human smuggling is contained in the provisions of Article 120, paragraph 1, of Law No. 6 of 2011.

References


KEIMIGRASIAN. Sekolah Tinggi Ilmu Hukum IBLAM.