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Vol. 6 No. 1, March 2025, Pages. 12-31 P-ISSN: 2746-0967, E-ISSN: 2721-656X

The Problems of Punishing People Smuggling Perpetrators as a Transnational Organized Crime Network

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Submitted: 30-07-2024; Reviewed: 08-08-2024; Revised: 13-09-2024; Accepted: 12-10-2024
DOI: 10.18196/jphk.v6i1.23442

Abstract

Due to its status as the largest archipelagic nation globally, Indonesia is very susceptible to transnational organized crime, particularly offenses related to smuggling people. To address this issue, the country changed Law Number 9 of 1992 regarding immigration and enacted Law Number 6 of 2011, which makes people smuggling a criminal offense to comply with the United Nations Protocol Against the Smuggling of Migrants by Land, Sea, and Air in 2000, which it had ratified. This study seeks to analyze and contrast law enforcement methods in cases of people smuggling, both prior to and following the enactment of Law No. 6 of 2011. This research employed a doctrinal methodology that falls within the qualitative legal research category. The findings indicate that there is no substantial disparity in law enforcement procedures before and during the implementation of Law No. 6 of 2011. Law enforcement officials encounter difficulties in collecting the necessary evidence to establish crucial aspects of people's smuggling, such as the pursuit of financial gain by the perpetrator network. The new immigration law has not yet enabled law enforcement against people smugglers to be more effective.

Keywords: Immigration law; People smuggling; Punishment; Transnational organized crime

1. Introduction

Advances in technology and the economy brought about by the globalization of markets and production have had a significant impact on the development of crime. Similar to other transnational organized crimes, people smuggling emerges and evolves in response to the demand and supply for smuggling services that help circumvent existing legal provisions. In the context of globalization, people's smuggling activities seem to be closely linked to the world economy. The perpetrators of these activities do not discriminate between the backgrounds of those who are smuggled and whether they are refugees or economic migrants. They provide smuggling services for anyone they can afford. However, for those who are smuggled, an unlawful movement to another country is not a desirable option. This decision is often made out of necessity because of circumstances such as armed conflict, persecution, natural disasters, poverty, and economic difficulties. The increasingly strict visa regulations make regular migration more difficult, leading to a high demand for irregular migration, including the use of people's smuggling services [1].

People smuggling, as a form of Transnational Organized Crime, not only undermines a nation's sovereignty and ideology but also has far-reaching effects on its economy, law enforcement, public health, politics, and government administration. Moreover, this illegal activity poses a significant threat to the safety, health, and well-

being of migrants and individuals being smuggled. Owing to their unauthorized status upon entering and remaining in transit and destination countries, these individuals face immense difficulties in obtaining their rights and become highly susceptible to violence, exploitation, and even human trafficking.

As the largest archipelagic nation globally, with 16,056 islands and a coastline of 99,093 km, Indonesia is highly susceptible to smuggling crimes. In recent years, the country has largely been portrayed in media reports as a strategic transit destination for foreign nationals bound for Australia. However, Indonesia's designation as a transit country belies its status as a country of origin for people smuggling, and Indonesian citizens have become the primary targets of such activities, particularly for migration to Malaysia. Despite being featured prominently in mass media, Indonesia's role as a transit country for people smuggling is just one aspect of the issue, and its position as a country of origin must also be considered [2].

Although Indonesia is typically categorized as both a "Country of Origin" and a "Country of Transit" for illegal activities related to people smuggling, it is challenging to determine the precise number of such activities that are carried out secretly or "clandestinely". This difficulty is also acknowledged by the United Nations Office on Drugs and Crime (UNODC), which collects data from various countries. However, a significant obstacle in this field is the lack of complete and reliable data, as well as difficulties in accessing the data held by various state institutions. Additionally, many governments do not systematically collect information on whether a person's illegal entry or stay was facilitated by a financial or material benefit, which aligns with obligations under the Smuggling of Migrants Protocol. As a result, statistics from many governments do not differentiate between individuals who enter or stay in a country, with or without the assistance of migrant smugglers. Moreover, a considerable number of governments that have introduced the category of "smuggled migrant" into their data collection systems do not ensure the necessary efforts to determine whether an irregular migrant was also a smuggled migrant and do not record such information accordingly.

While obtaining precise figures on people's smuggling operations is challenging, the latest UNODC report in its 2019 publication indicates that a substantial proportion of the migration process in Southeast Asia, particularly concerning irregular migration, is facilitated by a network of people's smuggling activities, with at least 80% of the activities supported by these operations [3]. Migration and mobility in Southeast Asia have been significantly affected by the pandemic, and measures implemented to control the spread of COVID-19 have disproportionately affected the migration process. However, based on the World Migration Report published by the International Organization for Migration (IOM) in 2024, Thailand, Malaysia, and Singapore remain the primary destinations for migrant workers within the subregion, including Indonesia. Nevertheless, the report does not specifically mention the latest data related to irregular migration facilitated by networks of people's smuggling activities.

Regarding people smuggling activities from Indonesia to Malaysia, UNODC reported that although since 2014, there has been a significant decline in people-smuggling crimes using Indonesian territory as a "transit" point, people-smuggling crimes originating from Indonesia to Malaysia have continued to occur with high

frequency between 2014 and 2018 [4]. The data in Table 1 show that over the last five years, from 2014 to 2018, Indonesia has been placed as the country of origin, which is the largest source of migrants smuggling into Malaysia and must be in contact with law enforcement officials and local authorities in Malaysia.

Table 1. Number of smuggled migrants brought into formal contact with authorities in Malaysia by country of origin, 2013-2018

Year	Top	Second	Third	Fourth	Fifth
2014	Indonesia (912)	Myanmar (734)	Bangladesh (247)	Turkey (102)	Philippines (63)
2015	Indonesia (1,001)	Myanmar (585)	Bangladesh (116)	Philippines (39)	Cambodia (16)
2016	Indonesia (1,292)	Myanmar (276)	Bangladesh (172)	Philippines (33)	Cambodia (6)
2017	Indonesia (749)	Myanmar (251)	Philippines (295)	Bangladesh (59)	Syria (1)
2018	Indonesia (503)	Myanmar (347)	Bangladesh (187)	Philippines (185)	Vietnam (33)

Table 1 presented earlier indicates that the Indonesian government is still facing significant challenges in curbing people's smuggling, with a substantial number of cases reported over the past five years. Notably, the smuggling network has exploited the inadequacies in the country's law enforcement framework and the insufficient cooperation between law enforcement agencies, both within Indonesia and with neighboring countries, particularly Malaysia.

The government of Indonesia has taken steps to address and prevent the crime of people smuggling by ratifying the UN Protocol against Migrant Smuggling through Law Number 15 of 2009. Furthermore, Indonesia ratified the parent instrument of the Protocol, the UN Convention Against Transnational Organized Crime (UNTOC), through Law No. 5 of 2009. To demonstrate its dedication to this issue, the Indonesian government passed and ratified Law Number 6 of 2011 on immigration, which replaced the previous immigration law, Law Number 9 of 1992, which had not classified people smuggling as a criminal offense. Prior to the implementation of Law Number 6 of 2011, law enforcement officials relied on provisions in Law Number 9 of 1992 concerning immigration, such as Article 48 on entering Indonesian territory without inspection or Article 54 on hiding, protecting, and providing accommodation to lawbreakers. However, the use of these provisions was ineffective in apprehending organized networks of people smuggling perpetrators due to the light punishment and threat period of two months to five years in prison [5]. Law No. 6 of 2011 on immigration not only criminalizes people smuggling but also includes new provisions regarding the elements of this crime and how law enforcement agencies in Indonesia should handle it. Additionally, the penalty for violating this crime has become more severe under the new immigration law, with offenders facing imprisonment for a minimum of five years and a maximum of 15 years.

Despite the Indonesian government's implementation of measures to provide a legal framework for combating smuggling, these efforts have proven inadequate for successfully confronting the networks engaged in this illicit business. This essay specifically intends to assess law enforcement in instances of human trafficking both

before and after the enactment of Law No. 11 of 2011 on immigration. The United Nations Convention against Transnational Organized Crime (UNTOC) and the United Nations Protocol against the Smuggling of Migrants, both of which Indonesia has ratified, are two documents that this study evaluates for their compatibility with the requirements of enforcing punitive measures against networks of offenders.

2. Research Methods

This research belonged to the qualitative legal research category, which aims to comprehend the experience of the research subject, such as their behavior and language, in a natural context through the use of natural methods [6]. This research strived to construct an understanding of the unquantifiable aspects of law enforcement practices related to the crime of people smuggling and to determine the causal relationship between the substance and legal norms of the crime. Moreover, qualitative research methods allow researchers to uncover hidden reasons behind social action and understand the social significance of a phenomenon [7].

The authors' general perspective in this study was the alignment between legal norms for smuggling people and actual practices in Indonesia. This study conceived of law as a system of rules that controls human behavior, as specified in norms related to people smuggling, and aims to safeguard social life [8]. Effective enforcement of the law is determined by whether law enforcement officials implement and enforce these rules, which results in the public complying with the intentions behind these regulations. In other words, the application of the law was assessed for its effectiveness in real-life situations by examining whether legal norms governing people smuggling were actually enforced by law enforcement and whether these laws successfully direct people's behavior. This study focused on the practical application of these laws through case studies, judicial decisions, scientific papers, and other relevant documents. The author aims to identify the practical challenges faced by law enforcement regarding people smuggling in Indonesia and the hidden meanings of interpreting these laws. This study then described the gaps between the legal concepts and values established in Indonesia and their actual implementation.

This study employed a doctrinal research approach, which is characterized by Hutchinson and Duncan as an integration of various rules, principles, norms, interpretive guidelines, and values. It offers an explanation, coherence, or justification for a segment of the law as part of a larger legal system [9]. The term "doctrinal" is closely linked to the doctrine of precedent, as legal rules gain doctrinal quality due to their consistent application and organic, gradual evolution. Doctrinal research pertains to legal concepts, principles, norms, and rules that belong to the law itself. This study focused on the law related to people smuggling in Indonesia. Specifically, the doctrinal approach was employed to construct the reality and meaning of the implementation of national legal instruments that harmonize international law related to the criminal act of people smuggling, which is an organized transnational crime. Therefore, the main objective of this research is the implementation of national legal instruments that harmonize international law related to crime and cases of people smuggling as transnational organized crime.

This research undertook a comprehensive analysis of the statutory approach, which involved examining the legal rules that form the focus of the study. To achieve this, researchers considered the law as a comprehensive, all-inclusive, and systematic system [10]. Additionally, the conceptual approach entailed reviewing legal doctrines and viewpoints that had emerged in legal science to provide a foundation for constructing legal arguments to resolve legal issues. These doctrines offer relevant legal definitions, concepts, and principles to clarify ideas. In the context of this study, the provisions on people smuggling in Indonesia and the practice of handling people smuggling within law enforcement against perpetrator networks were examined in detail. Lastly, the case approach involved examining Court decisions regarding the criminal act of smuggling people, which had a permanent legal force. Specifically, this study utilized secondary data as the primary source of information, which encompassed, firstly, primary legal sources comprising the Law of the Republic of Indonesia Number 6 of 2011 concerning Immigration, Law of the Republic of Indonesia Number 9 of 1992 concerning Immigration, and the Law of the Republic of Indonesia Number 15 of 2009 concerning Ratification of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air. Furthermore, this research examined Court decisions pertaining to immigration in people smuggling cases that were adjudicated by the Court before and after the implementation of Law Number 6 of 2011. Secondly, secondary legal sources comprised case studies, literature reviews, books, law journals, scholarly opinions, and symposium proceedings.

3. Results and Discussion

3.1. The Legal Framework for Prosecuting People Smuggling Offenders in Indonesia

As previously stated, the government of Indonesia has taken steps to address the issue of people smuggling, which is a form of transnational organized crime. To this end, Indonesia ratified the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, which is a supplementary instrument to the United Nations Convention against Transnational Organized Crime (UNTOC). This action is crucial for addressing the challenges and requirements of the contemporary complex world. Advancements in technology and communication have led to global competition and a need for interdependence between countries. This interplay has impacted relations between countries in various sectors, such as human rights, environmental law, international investment law, and international criminal law [11].

Given the Indonesian government's acceptance of this international agreement, it is crucial to evaluate its legal status under Indonesian national law. Within the realm of international law, two theories, monism, and dualism, provide insight into the connection between international law and state law. International law monism asserts that international and domestic laws constitute a cohesive and integrated legal framework. This perspective argues that international law can be applied to domestic legal systems without explicit integration or change. Monism posits that international law is inherently incorporated into national law, granting local Courts the power to implement and uphold international norms directly. Supporters of the monism thesis argue that international law is more important because it is based on fundamental

principles that are also found in national law, such as rights, social solidarity, or the principle of *pacta sunt servanda* [11].

Dualism in international law is a legal doctrine that acknowledges a distinct division between the international and local legal systems of individual countries. This idea asserts that international and domestic laws have separate domains of activity, each governed by its own independent set of norms and principles. Dualism posits that the incorporation of international law into a nation's domestic legal framework occurs through a distinct procedure that typically involves the passage of legislation or the adoption of treaties into domestic law. Consequently, international law does not have inherent applicability within the jurisdiction of a state, and it is within the power of nations to determine which international commitments they will adopt in their legal frameworks and how they will enforce them. Dualism asserts the primacy of domestic law over international law within the territory of a state, enabling states to preserve their autonomy and sovereignty in their interactions with international law and not be automatically obligated by international commitments without their explicit consent [12].

Ko Swan Sik states that Indonesia's stance on monism and dualism is still unclear [13]. The integration of international law into the domestic legal framework is not straightforward because of the diverse political decisions and execution of these principles. Nevertheless, Hikmahanto Juwana argues that these ideas are only applicable when there is disagreement between national and international law. Juwana highlighted the importance of converting international agreements into domestic legislation to ensure efficient implementation [14]. Indonesia officially approved and implemented the UN Protocol against the Smuggling of Migrants through its incorporation into Law Number 15 of 2009 and Law Number 6 of 2011. Indonesia's commitment to international agreements is demonstrated by its concrete efforts to integrate it into its domestic legal system. The incorporation of the UN Protocol against Migrant Smuggling into Indonesian national law holds a prominent position, particularly in the execution of this international agreement. This incorporation was officially implemented through Law Number 15 of 2009 on the Ratification of the UN Protocol Against Migrant Smuggling on September 28, 2009. To showcase its dedication to this treaty, the Indonesian government later substituted Law Number 9 of 1992 on Immigration with Law Number 6 of 2011 on immigration. The new Immigration Law establishes the requirements of the Indonesian State as a participant in the UN Protocol against Migrant Smuggling. It includes the requirement to make people smuggling illegal, as stated in Article 6 of the Protocol.

Law Number 6 of 2011 on immigration has incorporated the term "People Smuggling" to denote the notion of " Smuggling of Migrants." Article 1 (32) of the law precisely defines People Smuggling as the act of seeking financial gain, either directly or indirectly, by transporting individuals or a group of individuals, whether organized or not, or by instructing others to do so. This transportation occurs without legal authorization to enter or exit Indonesia or other countries. This involves the use of genuine or forged documents, or even without any travel documents, and involves passing through or avoiding immigration checkpoints. The term People Smuggling, as

stated in Article 1, paragraph 32 of the Immigration Law, resembles the definition in the Protocol despite its more elaborate and protracted construction. Both definitions encompass crucial components, such as introducing an individual or collective into a nation without legal consent. Although the Protocol's definition is concise, the term in Immigration Law broadens the range of criminal activities by incorporating further components.

This increase could have favorable ramifications for the prosecution of People Smuggling cases, particularly when it encompasses not only the transportation of people or groups but also those who authorize the crime. This development could have substantial ramifications, such as the ability to identify and capture organizers and other individuals involved in the network. For example, the Immigration Law includes regulations that apply not only to bringing individuals into Indonesian territory or another nation but also to removing individuals from Indonesian territory. This formulation seems to effectively address Indonesia's requirements as it tackles the issue of people smuggling that the country faces. It recognizes that the problem is not limited to individuals smuggling into Indonesia as a transit or destination country but also aims to target those who facilitate the smuggling of Indonesian citizens out of the country.

The similarity between the Protocol and Immigration Law rests in their execution, particularly in terms of whether the act is carried out in a structured or unorganized manner and whether valid documents, fraudulent documents, or no documents are used. Moreover, the phrasing of the "means" part in the Protocol seems to expand the scope of the concept of people smuggling. It encompasses the act of introducing someone in a manner that contravenes the law, regardless of whether it is done in an organized or unstructured fashion. This formulation implies that the provision is not restricted to actions conducted by organized crime groups, as defined in Article 2(a) of UNTOC. According to this article, organized crime groups are defined as "structured groups consisting of three or more individuals, existing for a certain duration, and acting together with the intention of committing one or more serious crimes or offenses outlined in this Convention, with the purpose of obtaining financial or other material gains, either directly or indirectly." Put simply, the act of criminalizing people smuggling can nonetheless happen, even if it is not possible to establish the direct involvement of organized crime groups. It is crucial to elucidate this formulation to avoid any misinterpretations, particularly among law enforcement officials who may be reluctant to dismantle masterminds and organized networks of human trafficking perpetrators and instead concentrate solely on low-level actors who do not have substantial financial involvement.

The subsequent concern relates to the aspect of intention in Immigration Law, encompassing the objective of facilitating illegal immigration as a fundamental component of the definition of people smuggling, as delineated in Article 3(a) of the UN Protocol. According to Law Number 6 of 2011 on immigration, the objective component refers to the intention to pursue financial gain, whether by direct or indirect means. It is crucial to ensure a clear understanding of the definition of "profit." As per the Protocol and Convention, which employs the "financial and material benefits" methodology, gains should be associated with instances of corruption and money laundering. Hence,

regulations concerning profits should be interconnected with the stipulations outlined in Article 2(f) of Law Number 8 of 2010, which pertains to the Prevention and Eradication of Money Laundering as well as the relevant rules in the Corruption Eradication Law.

In accordance with Article 1, paragraph 32, Article 120 (1) of Law Number 6 of 2011 on immigration, smuggling is classified as a criminal act. This provision states that "any individual who profits directly or indirectly by transporting a person or group of individuals, whether organized or not, or instructing others to transport a person or group of individuals, whether organized or not, without legal authorization to enter or exit the territory of Indonesia or another country, using legitimate or fraudulent travel documents or without any travel documents, bypassing or avoiding immigration checkpoints, shall be subject to imprisonment for a term of at least five (5) years and up to 15 (15) years and a fine of at least IDR 500,000,000 (500 million Indonesian rupiah) and a maximum of IDR 1,500,000,000 (one billion five hundred million Indonesian rupiah)".

By examining the definitions and components of the act of smuggling, law enforcement officials now possess a more precise and comprehensive legal framework that is essential for effectively preventing and punishing the network of individuals involved in this criminal activity. The United Nations Office on Drugs and Crime (UNODC), which is responsible for supporting and monitoring the efforts of state parties to align their legislative products, has acknowledged the Indonesian government's serious commitment and efforts in this regard. UNODC commends the Indonesian government to include and regulate acts related to the criminal act of people smuggling in a comprehensive manner in accordance with the Convention and Protocol and emphasizes the importance of equality and respect for human rights in the formulation of these provisions. Apart from the criminal acts outlined in Article 6 of the Protocol, Law Number 6 of 2011 concerning immigration also has provisions that regulate the elements of Article 120 related to the criminal acts of people smuggling in different sections. These provisions usually have less severe sentences as they are considered immigration violations or crimes rather than people smuggling crimes. For instance, Articles 114(1) and (2) of Law Number 6 of 2011 concerning immigration states are as follows:

1. The person responsible for transportation entering or leaving the territory of Indonesia without going through the Immigration Checkpoint, as specified in Article 17 paragraph 1, shall be punished by imprisonment for a maximum of one year and/or a fine of a maximum of IDR 100,000,000.00 (one hundred million Indonesian rupiah).
2. The person in charge of transportation who intentionally lowers or raises passengers without being checked by the Immigration Officer or landing inspection officer at the immigration checkpoint, as specified in Article 17 (2), shall be punished with imprisonment for a maximum of two years and/or a fine of a maximum of Rp. 200,000,000.00 (200 million Indonesian rupiah). This issue arises when Article 114 is frequently employed as an alternative charge or a means of imposing fewer sentences for individuals responsible for smuggling people. Paradoxically, efforts to penalize perpetrators of crimes involving people smuggling often involve law

enforcement officials using Article 114 instead of Article 120, which is specifically designed to address such criminal activities.

Apart from including provisions to penalize people smuggling, Law No. 6 of 2011 also encompasses several regulations on the misuse of travel or identity documents. The provisions are detailed in Articles 121, 123, 126, 127, 128, 129, and 131. For example, Article 121(a) prohibits the creation of counterfeit or altered visas, entry permits, or stay permits with the intention of using them to enter, exit, or reside in Indonesia. Similarly, Article 126(e) addresses the act of forging Republic of Indonesia travel documents or fabricating counterfeit documents with the intention of using them for oneself or another person.

It is crucial to note that these regulations concerning the misuse of travel or identity documents are frequently applied in cases of people smuggling, which are criminal acts. However, there is a problem with the application of these provisions when they are not linked to the definition of people smuggling, as outlined in Article 1, point 32, and Article 120(1) of Law No. 6 of 2011. This has implications for the ineffective handling of people smuggling, which may result in the failure to dismantle smuggling networks and reflect a lack of commitment to treating smuggling as a serious criminal offense.

3.2. Punishment of Person Smuggling Perpetrators in the Judicial Process

a. People Smuggling Cases Prior to the Adoption of Law Number 6 of 2011

Prior to the enactment and enforcement of Law Number 6 in 2011, Indonesia dealt with cases of people smuggling under previous immigration laws, notably Law Number 9 in 1992. During this period, the act of smuggling was not considered a criminal infraction. As a result, law enforcement has mostly concentrated on addressing offenses involving the forgery of passports or travel documents and unauthorized presence in the Indonesian territory. These offenses are typically administrative in character and associated with less severe penalties. As a result, these efforts did not effectively discourage offenders, as evidenced by the increasing number of foreign migrants smuggling into Indonesia before proceeding to Australia.

The degree of people smuggling in Indonesia prior to the implementation of Law Number 6 of 2011 concerning immigration is notably high. This was one of the primary reasons the Indonesian government was eager to join related international agreements, such as the UN Protocol against Migrant Smuggling. The gravity of the threat posed by people smuggling at that time was evident from the increase in the number of people smuggling between 2009 and 2011. According to data obtained from the National Police Headquarters during that period, 26 cases were handled in 2009, 29 in 2010, and 67 in 2011. Despite this increase, the number of cases handled by the National Police was still significantly lower than the number of individuals who were smuggled or transited through Indonesian territory. According to National Police data, 1311 illegal immigrants from 27 countries, including Afghanistan, Iran, Myanmar, Sri Lanka, Palestine, Pakistan, India, and Kuwait, entered Indonesia in 2011.

As shown in Table 2, Melissa Crouch and Antje Missbach revealed a significant level of proficiency among those involved in people smuggling cases during the period

from 2009 to 2011 at the investigative level. Regrettably, despite the large number of cases being investigated, there is no concrete information about the number of cases that have been advanced and sentenced by Court institutions. Although the UNODC database indicates that only 4 (four) cases were tried during the period 2009–2011, this suggests a substantial gap when compared with the number of cases investigated in that time frame.

Table 2. Number of Investigations Against People Smuggling Perpetrators, 2009-2011 Period

Year	Number of Cases	Suspect's Nationality
2009	15 Cases	Indonesia (23 people), Pakistan (7 people), Afghanistan (2 people)
2010	24 Cases	Indonesia (30 people), Afghanistan (2 people), Pakistan (1 person), United States (1 person), Iraq (1 person)
2011	14 Cases	18 people (Suspect's nationality unknown)

As previously mentioned, a major obstacle in dismantling and punishing the people smuggling network was the fact that smuggling was not classified as a criminal offense at that time. This was because the legal provisions utilized were connected to immigration, as specified in Law Number 9 of 1992. This case study explores the Court rulings made in relation to the implementation of Law Number 9 of 1992 concerning immigration in addressing people smuggling crimes that took place during that time frame.

1) The case of People Smuggling to Court Decision Number 365/Pid. B/2011/PN.Cbd.

The Cibadak District Court in Indonesia tried Heider Ali Bin Ali Muhammad, an Australian citizen, and Abdul Khidir Basyir, a Kuwaiti citizen, for their involvement in attempting to smuggle 32 migrants from Iran, Iraq, and Kuwait to Christmas Island, Australia. These individuals attempted to transport migrants from West Java, Indonesia. Heider Ali Bin Ali Muhammad, the Australian perpetrator, had previously held Iraqi citizenship and arrived in Australia on a people-smuggling boat in December 2001. He was granted asylum and later became an Australian citizen through naturalization. During the trial, witnesses testified that the migrants paid defendants between $12,000 and $17,000 for departure costs, which suggests that some family members may have given the funds directly to the defendants, who then passed them on to the smugglers. Both defendants denied any involvement in the planned smuggling operation, but testimony from some of the smuggled migrants stated that they had paid the defendants for their trip to Christmas Island. Abdul Khidir Basyir, the other defendant named in the indictment, was alleged to be the organizer and manager of the people smuggling operation.

The two defendants faced charges under Articles 50 and 54 of Law Number 9 of 1992 concerning immigration for their actions. Article 50 primarily addresses the misuse of immigration permits by foreigners, which is punishable by a maximum sentence of five years in prison. On the other hand, Article 54 primarily regulates hiding, protecting, providing accommodation, providing livelihoods, or working for foreigners as criminal offenses, with a maximum penalty of imprisonment of six years. As a result of these charges, the Panel of Judges sentenced the two defendants to prison for one year and eight months, as they were found guilty of violating Article 50 of Law Number 9 of 1992

concerning immigration by misusing the immigration permit granted to them. Previously, it was stated that the trial in this case occurred prior to Indonesia's ratification and implementation of Law No. 6 of 2011 on immigration. Subsequently, the outdated Immigration Law, specifically Law Number 9 of 1992, was employed to prosecute the defendant. In the old law, smuggling was not explicitly defined as a criminal act. As a result, the two defendants could not be charged or sentenced for the crime of people smuggling, despite their actions fulfilling the elements of unlawful importation of people and violating the provisions of Article 120 of Law Number 6 of the year 2011 on immigration, which pertains to obtaining financial gains. Unfortunately, the enforcement of the law in this instance was less effective because of the absence of legal provisions that criminalized actions related to people smuggling, as outlined in Article 6 of the Protocol.

Based on the information explored and assessed during this trial, the authors contend that there was an absence of investigative or prosecutorial efforts that connected the defendant's actions to the core aspects of people smuggling, such as the unlawful importation of someone who is not a citizen or permanent resident in Indonesia, the residence or stay of a person who is not a citizen or resident in contravention of the law, and the financial and other material advantages acquired by the people's smuggling network. To establish the element of bringing smuggled individuals into Indonesian territory, law enforcement officials should make an effort to gather evidence during their investigations that covers the recruitment process, transportation, and the actions taken to facilitate the entry of these individuals at the border. This necessitates cooperation with other law enforcement agencies, including those from the country of origin. Likewise, investigators and public prosecutors have not made any apparent efforts to uncover the flow of money paid by the people being smuggled, which is another essential element of people's smuggling. Law enforcement officers should take action to track the flow of money paid by smuggled migrants, including tracing it to the bank account where it is deposited or to any assets purchased with that money.

The authors indicated that the inability to demonstrate violations of crucial components of people smuggling obstructed law enforcement officials from detecting and detaining other individuals within the people smuggling network despite numerous witness testimonies during Court hearings, suggesting that the accused was not the primary actor or lone perpetrator in people smuggling operations. This inadequacy also led to the outcome that law enforcement agencies were unable to confiscate or seize the illicit profits made by the perpetrator's network as a result of people smuggling crimes. Additionally, the perpetrators who were prosecuted received a relatively lenient sentence of one year and eight months despite substantial evidence indicating that they had committed a significant offense. Regrettably, it was impossible to trace any assets purchased with illicit funds or to determine their location.

2) The case of People Smuggling to Court Decision Number 523 K/ PID/ 2008

The authors argue that the handling of this case shows the inadequacy of using Law Number 9 of 1992 on immigration to penalize people smuggling offenders in Indonesia. Perpetrators who smuggled more than 1,500 individuals for a considerable period and earned large profits from their crimes were only penalized under

immigration provisions with relatively lenient sentences. This inadequacy occurred because the existing provisions at the time were incapable of covering acts related to people smuggling using the methods and techniques employed by the smuggling network. Offenders' actions, including bringing foreign nationals into Indonesian territory illegally, facilitating the smuggled individuals to reside in Indonesia unlawfully, and obtaining financial benefits through smuggling, were not sanctioned due to the absence of a legal basis.

The authors asserted that law enforcement officials failed to disclose the identities of the government and law enforcement officials who allowed a foreign national to remain there for an extended period. It is reasonable to assume that the perpetrators' networks employed corrupt practices or bribery to carry out their operations for a considerable time. Furthermore, the legislation had limitations in terms of jurisdiction or authority to investigate cross-border and organized activities, including efforts to trace and freeze assets obtained through people-smuggling crimes. Although the Law on the Eradication of Money Laundering was in effect at the time, there was no apparent attempt to use its provisions to prosecute the network of people smuggling perpetrators involved. The absence of strong grounds for criminalizing the actions of people smuggling networks restricts the ability of law enforcement to prosecute perpetrators for criminal offenses related to people smuggling. Therefore, perpetrators are typically charged with immigration violations such as visa fraud, which carries lighter penalties.

b. People Smuggling Cases After the Adoption of Law Number 6 of 2011

As previously stated, Law Number 6 of 2011 regarding immigration regards people smuggling as a criminal offense, and its provisions are deemed comprehensive enough to meet the standards set by the UN Protocol against Migrant Smuggling. The law also includes provisions that do not criminalize individuals who are smuggled. However, ratification of the new Immigration Law does not necessarily lead to improved law enforcement in cases of people smuggling. Despite these efforts, the following is an analysis of people smuggling case studies concerning immigration after the enactment of Law Number 6 of 2011, which serves as a concrete manifestation of Indonesia's efforts to harmonize the UN Protocol against Migrant Smuggling.

1) The case of People Smuggling to Court Decision Number 155/Pid.Sus/2013/PN.Rkb

The Rangkasbitung District Court handled a case involving Salahudin Al-Hasan, who was charged with contravening Article 120 (1) of Law No. 6 of 2011, which specifically addressed immigration violations and the act of smuggling people. A contingent of 49 foreign individuals from Afghanistan, Iran, and Pakistan was intercepted by law enforcement authorities from the Indonesian National Police (INP). These people had unlawfully entered Indonesia and were en route from Jakarta to Banten. Their intended destination was Christmas Island, Australia, where they planned to engage in a people-smuggling operation. They are scheduled to join a hired boat for this purpose. Through the People Smuggling Task Force, the INP successfully detained Salahudin Al-Hasan, the culprit who served as the driver of passengers being smuggled. Consequently, the defendant was charged with the offense of smuggling people.

It is essential to emphasize the key point in this trial, which is that the defendant was initially charged with smuggling people under Article 120 (1) of Law Number 6 of 2011 concerning immigration. In this regard, the investigators sought specifically to demonstrate that the defendant had committed the offense of people smuggling, which involves "bringing a person or group of people, whether organized or unorganized, who do not have the legal right to enter or leave Indonesian territory." However, the prosecutor later filed a charge only of violating Article 114 (1) of the same law, which pertains to the punishment of one year in prison for those responsible for transportation entering or leaving Indonesia without passing through an immigration checkpoint. As a result, the Court only applied the alternative charge of Article 114 (1) and sentenced the defendant to one year in prison rather than the penalty for people smuggling.

As the authors pointed out, the main issue in this case was that investigators and public prosecutors initially misinterpreted the meaning of people smuggling, as outlined in Article 120(1) of Law No. 6 of 2011 concerning immigration. The public prosecutor eventually realized this mistake and changed the charge to Article 114(1) of Law Number 6 of 2011, which is not related to efforts to criminalize people smuggling. From the outset, the investigation process should have focused on gathering evidence related to the essential elements of the crime of people smuggling, especially the element of illegally entering Indonesian territory. This is because the facts show that 49 foreign nationals entered and resided in Indonesian territory unlawfully. The trial decision files indicate that there was little effort by investigators to uncover and collect evidence indicating a violation of the element of "illegally entering a person into Indonesian territory." Establishing this proof is crucial to uncovering and punishing the network of perpetrators who facilitated the unlawful entry of 49 foreign migrants into Indonesian territory. Perpetrators are likely to use bribery or other corrupt practices to influence government and law enforcement officials, both at the border in their country of origin and in Indonesia.

The authors argue that law enforcement officials often struggle to demonstrate the element of financial gain, as outlined in Protocol and Law No. 6 in 2011. To address this issue, investigators should concentrate on gathering evidence related to the element of financial gains from the outset. The Protocol against Migrant Smuggling and Law Number 6 of 2011 on Immigration both emphasize that an act cannot be classified as people smuggling if there is no financial or material motive. In addition, the aim of smuggling is to obtain profit, either directly or indirectly, as stated in the law. As such, proving this element is crucial in investigating, prosecuting, and punishing people's smuggling networks. To achieve the objectives of the Protocol, this evidence should be collected in collaboration with relevant domestic institutions, such as the Center for Financial Transaction Reports and Analysis (PPATK), and partner law enforcement agencies abroad, particularly those in the origin country of smuggling.

According to the authors, the aim of including the concept of "seeking profit" in the Protocol is to obstruct people-smuggling organizations by cutting off their financial resources. Law enforcement should concentrate on uncovering the illicit funds obtained by these networks. However, it seems that this effort is lacking, as shown by the fact that the prosecution's focus has been narrowed down to proving the smaller amount of

money received by the driver who assisted in the people smuggling operations. This approach does not significantly impact people-smuggling organizations. Taking this into account, it would be unwise for the prosecution to continue demanding the defendant's conviction of people smuggling. The consequence of not thoroughly proving the profit-making elements is that the case only punishes the field perpetrators and fails to bring justice to the organizers and networks who played a crucial role and significantly profited from people-smuggling activities.

2) The case of People Smuggling to Court Decision Number 114-117/Pid.Sus/2012/PN-PCT.

The Pacitan District Court tried this case, and as stated in the verdict file, four Indonesian citizens were offered a certain amount of money to transport 60 migrants, including three children, from Jakarta to Pacitan. Migrants were from Iraq, Iran, and Kuwait. However, the police intercepted the convoy en route. The men were charged and convicted of human trafficking-related offenses, and the four defendants, Agus Dianto, Yuwardis, Sukanto, and Supriyanto, were each sentenced to IDR 5,000,000. The investigation revealed that Dianto and Yuwardis received IDR 1,000,000 as an initial payment, while Sukanto and Supriyanto received IDR 1,500,000. Additionally, during the trial, it was disclosed that Yuwardis received an IDR of 1,500,000 for fuel and food. The panel of judges found the defendants guilty of violating Article 120(1) of Law Number 6 of 2011 concerning immigration, and they were sentenced to two years in prison for the crime of smuggling people.

Although the elements of people smuggling were met, the judge handed down a sentence that was considerably lower than the minimum prison term of five years and a maximum of 15 years, as stated in Article 120 (1) of Law Number 6 of 2011 about immigration. The judges provided a justification for not imposing the mandatory minimum sentence by arguing that the law was excessively harsh and did not consider the defendant's economic status. The Court acknowledged the offer to transport foreigners to IDR 5,000,000 was enticing, given the family's financial needs, but the judges believed that the law had unfairly treated Indonesian citizens whom the law should protect. The Court then compared the minimum sentence with the penalty for Article 114 of the same law and found it to be lighter, concluding that the provision interfered with the judiciary's independence, as guaranteed by Law 48 of 2009 regarding judicial power. The panel of judges also acknowledged that the deterrent effect of a sentence does not depend on the length of time that a defendant must serve in prison. Furthermore, every person has the right to receive recognition, guarantees, protection, and legal certainty for fair and equal treatment under the law, as explicitly guaranteed in Article 28D of the 1945 constitution (second amendment). In making the decision to impose a sentence lower than the statutory minimum, the judge also cited Gustav Radbruch's Legal Purpose Theory, which asserts that a judge must prioritize justice over the strict application of the law. This case has garnered international attention and has been subject to criticism for imposing a sentence that is significantly below the threat of a minimum prison sentence or a minimum of 5 years in prison.

According to the authors, there appears to be a disparity between investigators' and public prosecutors' understanding of the components of the criminal act of

smuggling, regardless of the verdict given by the panel of judges. As previously discussed, within the framework of the objectives and goals of the Protocol, gathering evidence related to the element of "seeking financial and material gain" is an essential aspect of the definition of people smuggling. Thus, this element should be the primary focus of the law enforcement process, encompassing investigation, prosecution, and punishment. To demonstrate the intent behind various unlawful acts connected to people smuggling, efforts and actions related to investigation, prosecution, and punishment must be linked to the purpose or motive for carrying out criminal acts of people smuggling, namely obtaining financial or other material advantages. In this instance, the investigation should not only concentrate on the profits obtained by the individuals engaged in the acts but also on the costs paid by the smuggled individuals and how they relate to the profits made by the perpetrator network in the people-smuggling operation. This proves that the element of making a profit is receiving a specific amount of money from the perpetrator, which was IDR 5,000,000, is a less complicated approach and may not fully capture the objectives of the element of "obtaining financial and material benefits" as stipulated in the Protocol.

The fight against organized crime requires a comprehensive and serious approach to financial aspects and profits. By targeting these areas, perpetrator networks' capabilities can be significantly weakened, ultimately preventing the continuation and growth of people's smuggling activities. It is crucial to carry out investigation, prosecution, and punishment efforts with dedication and to focus on this objective. A strong emphasis on the financial aspects and profits obtained by organized crime groups can have a detrimental effect on their operations and help put an end to their illegal activities.

From the authors' perspective, the judge's decision related to the defendants' legal processes may have caused anxiety about injustice. However, the author held differing opinions from the judge's considerations. Additionally, law enforcement officials failed to dismantle the network of perpetrators responsible for unlawfully transporting foreign nationals into Indonesian territory. This included recruiting migrants, facilitating their travel, and using bribes and corrupt practices. During the trial, only the field actors who assisted in transporting the smuggled individuals were tried, while the organizer or coordinator remained large. In line with the UN Protocol, law enforcement should bring the entire network of perpetrators to justice, including those responsible for recruiting, providing shelter, falsifying travel documents, and accepting bribes. The trial revealed that some individuals gave money to transporters. Moreover, a lack of international cooperation was evident in the absence of evidence examined and presented in a trial that demonstrated the transnational or cross-border nature of the crime [15].

The authors emphasized the importance of the Protocol Against Migrant Smuggling in Indonesia's constitutional framework for national legal processes. This protocol, which Indonesia officially accepted and later aligned with Immigration Law No. 6 of 2011, is a crucial component of the country's legal system. The author challenges the assertion made by the judge that the issue arises from the unjust nature of the law's provisions, arguing that it stems from the inconsistencies and misinterpretations made by law enforcement agencies in the enforcement of the provisions related to people

smuggling in Law Number 6 of 2011. The primary objective of the international community is to reach a consensus on the UNTOC to address the threats posed by organized crime syndicates that engage in diverse criminal activities across different countries. Equipped with the UN Protocol against the Smuggling of Migrants, this UNTOC instrument aims to prevent people from smuggling, prosecute networks involved in this illegal activity, and enhance international cooperation. Indonesia seeks to improve its capacity to combat smuggling by ratifying the UNTOC and its protocol. This will involve strengthening cooperation with destination countries and other relevant countries to ensure that those involved in smuggling are effectively punished and to safeguard Indonesian citizens who have been smuggled. In light of these considerations, judges must take them into account when making their decisions.

3.3. Efficacy of Law Enforcement in Combating People Smuggling

The field of legal efficacy in law enforcement entails comparing legal ideals with actual legal implementation. In other words, it involves scrutinizing the correlation between the theoretical framework of the law and its practical application. The efficacy of legislation is evaluated by scrutinizing the extent to which legal regulations are adhered to and enforced. The main criterion for evaluating the effectiveness of anything that is legally required is the extent to which legal standards are followed. Muladi contends that the implementation of criminal law is a systematic procedure that encompasses multiple structural subsystems, including police personnel, prosecutors, Courts, correctional institutions, and legal advisors. When considering the application of criminal law, it is important to examine it from three perspectives. First, as a normative system, it involves applying legal rules that define social values and corresponding criminal punishments. Second, as an administrative system, it encompasses interactions between various law enforcement agencies that constitute the justice subsystem. Finally, as a social system, it responds to crimes by considering the diverse perspectives of society [16].

According to the author's assessment of the cases discussed earlier, there seems to be no significant variation in the manner in which law enforcement officials in Indonesia approached people smuggling cases before and after the implementation of Law No. 6 of 2011 on immigration. Despite the fact that people smuggling is considered a serious organized crime, law enforcement agencies in Indonesia continue to treat it as a violation of ordinary immigration offenses rather than recognizing its appropriate context. The aim and purpose of the Protocol and Convention, as well as the harmonization of the two international agreements in national law, is to provide a stronger and clearer legal framework that would allow for adjustments and changes in the approach and behavior of law enforcement officials in handling cases of people smuggling. Unfortunately, this has resulted in ineffective law enforcement in cases of criminal acts involving people smuggling in Indonesia. Indonesian law enforcement officials must recognize that smuggling undermines state sovereignty and has severe social and economic consequences that are detrimental to the nation's interests. As the preamble to the 1945 Constitution states, the aims of the state include "protecting the entire Indonesian nation

and all of Indonesia's blood and implementing world order based on independence, eternal peace, and social justice."

The authors found that law enforcement officials did not take sufficient action to establish the elements of the crime of people smuggling, both before and after the introduction of Law Number 11 of 2011 on immigration. This encompasses a dearth of data pertaining to the recruitment procedure, the ingress and egress of illicitly transported individuals, and their transportation and lodging. In addition, the network of individuals responsible for carrying out these activities, which included border security agents and law enforcement officers who aided in the transportation of people, was not recognized [17]. Law enforcement failed to establish the transnational or cross-border aspect of crimes committed by organized crime group networks in cases involving people smuggling. The lack of ability to ascertain the network of culprits and gather evidence has impeded the establishment of connections between culprits' actions and other illicit activities, such as forging identity and travel documents, bribery, and corruption. These activities are likely to be carried out by security officers or law enforcement personnel at the border who engage in corrupt practices related to people's smuggling. The United Nations Office on Drugs and Crime (UNODC) documented multiple cases of bribery at the Indonesia-Malaysia border in 2019. Corrupt border authorities and law enforcement personnel were complicit in accepting bribes in return for facilitating the entry or exit of smuggled individuals into or out of Indonesia without hindrances. In addition, they received complicit payments in exchange for endorsing passports and other travel documents.

The analysis of cases heard in these Courts revealed that the significant profits earned by individuals involved in smuggling were generated from the hefty fees paid by those being smuggled [18]. Understanding the modus operandi of people smuggling and its connection with organized crime requires an examination of the fees paid by the smuggled individuals and the profits acquired by the people smugglers. However, law enforcement agencies do not make use of financial investigations to identify the wealth obtained by perpetrators [19]. Although Indonesia has a robust legal framework to apprehend individuals involved in smuggling, there is no noticeable effort by law enforcement officials to collect evidence to trace or track the money originating from the fees paid by the individuals involved in smuggling. Law enforcement officers focus only on the money received by drivers or field agents who assist in transporting smuggled individuals. This approach is not consistent with the objectives of the UNTOC and the Protocol, which emphasize the importance of proving the elements of financial or material gain obtained by the perpetrator to disrupt funding sources and cripple the criminal organization. Implementing effective and efficient measures that concentrate on identification, tracking, freezing, confiscation, and seizure of the proceeds of crime are crucial steps in law enforcement that can have a positive impact on prevention efforts and significantly contribute to effective law enforcement for criminal activities, such as people smuggling.

The results of this research additionally demonstrate the lack of coordination among law enforcement agencies in Indonesia, particularly regarding the integration of institutions associated with the criminal justice system. Mardjono Reksodipoetro

emphasized that the Criminal Justice System is a system within a society that addresses crime issues, and all components of the system, including law enforcement and other related investigative agencies, prosecutors, Courts, and correctional institutions, are expected to work together and form an "integrated criminal justice system" to achieve the system's goals [20]. The primary objectives of the system are to prevent individuals from becoming victims of crime, solve crimes that have occurred, and ensure that criminals do not re-offend [21]. Upon examining the handling of criminal cases related to people smuggling, there is no apparent role for Immigration Investigators, despite the Immigration Law granting them authority to conduct investigations.

The lack of involvement of PPATK in aiding law enforcement in gathering evidence regarding financial or material profits obtained by perpetrators involved in the criminal act of people smuggling is noteworthy. The cognitive problems faced by investigators, public prosecutors, and judges in comprehending the crime of smuggling have resulted in fragmentation and ineffective law enforcement within the criminal justice system. Therefore, integration of the criminal justice system is crucial for achieving effective law enforcement against people smuggling. As per the UNTOC and the UN Protocol against the Smuggling of Migrants, cooperation between law enforcement agencies is essential in preventing and overcoming organized transnational crimes, including people smuggling.

It is important to note that this study found that law enforcement was unable to overcome jurisdictional obstacles in people smuggling criminal cases. Additionally, the idea that people smuggling is a cross-border criminal act has not been addressed effectively. This is primarily because of the lack of optimal international cooperation efforts to collect and strengthen evidence against the main perpetrators located outside Indonesia. As a result, law enforcement efforts have not been successful in ensnaring and punishing all networks of people smuggling perpetrators and have failed to eliminate safe havens for these criminals, particularly those operating outside Indonesia's territorial jurisdiction. In line with Article 1 of the UNTOC, the Convention's objective is to promote cooperation to more effectively prevent and eradicate transnational organized crime. Therefore, strong, comprehensive, and effective cooperation is necessary to ensure the success of actions to prevent crime and to punish networks of people smuggling perpetrators.

4. Conclusions

The authors' analysis of cases involving people smuggling suggests that there has been no significant difference in law enforcement practices concerning immigration before and after the implementation of Law Number 6 of 2011. Despite the harmonization of the UNTOC and the UN Protocol against Migrant Smuggling in this law, the spirit of these provisions has not been evident in the investigation and prosecution of criminal cases of people smuggling. In reality, law enforcement agencies have struggled to gather the necessary evidence to fulfill the key elements of the crime of people smuggling, including obtaining profits from the network of perpetrators. Efforts to collect cross-border evidence are still minimal, which limits the ability of people smuggling at the local level to investigate, prosecute, and punish criminal acts.

The lack of trained investigators and law enforcers, including police and immigration officers, who are skilled in solving the problem of criminal acts of people smuggling and recognizing the anatomy of transnational organized crime further hinders efforts to view people smuggling as an organized transnational criminal act. This is evidenced by the local nature of case development efforts, which have not yet been connected with the efforts of other countries, particularly those of origin and destination.

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