

Research Article

Law Enforcement in The Handling of People Smuggling Crime in Indonesia

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ABSTRACT

People Smuggling is a rising phenomenon of Transnational Organized Crime. Indonesia has taken an important step to combat this phenomenon by ratifying the UN Protocol against Smuggling of Migrants which set of key obligations relating to People Smuggling. This normative legal research aims to identify and discuss the challenges to convert these obligations into practical outcomes. The research results show some practical challenges for the law enforcement agencies responsible for combating people smuggling which includes a number of issues that relate to the prosecutions of migrant smugglers and to the dismantling of smuggling networks. Therefore, it is necessary to have a model of law enforcement in handling a crime as complex as people smuggling by improving the legal substance, the legal structure as well as the community participation in regional perspectives.

Key words: Law Enforcement; Transnational Organized Crime; People Smuggling.

ABSTRAK

Penyelundupan manusia merupakan fenomena Kejahatan Lintas Negara Terorganisir yang semakin mendapatkan perhatian. Sebagai negara yang telah meratifikasi Protokol Perserikatan Bangsa Bangsa melawan Penyelundupan Migran, Indonesia harus melaksanakan serangkaian kewajiban internasionalnya terkait dengan penanganan kejahatan Penyelundupan Manusia. Penelitian hukum dengan menggunakan metode yuridis normatif ini bertujuan untuk mengidentifikasi dan mendiskusikan tantangan dan hambatan yang dihadapi oleh penegak hukum dalam mengejawantahkan kewajiban-kewajiban tersebut dalam praktek. Hasil kajian menemukan sejumlah tantangan praktis yang dihadapi dalam penegakan hukum, termasuk diantaranya sejumlah masalah yang terkait dengan penghukuman terhadap para pelaku dan pemutusan jaringan penyelundupan manusia. Model Penanganan penegakan hukum yang kompleks seperti penyelundupan manusia sangat membutuhkan perbaikan dalam substansi hukum, struktur hukum dan juga partisipasi masyarakat dalam perspektif kawasan.

Kata Kunci: Penegak Hukum; Kejahatan Terorganisir Lintas Negara; Penyelundupan Manusia.

A. INTRODUCTION

People smuggling is one of Transnational Organized Crimes or a cross border crime (Transnational Organized Crime). Indonesia has become a source country of people smuggling in the

world with Malaysia and Middle East country as the main destiny countries, and also a key transit point for asylum seeker from Myanmar and Middle East heading to Australia (UNODC, 2018). People smuggling crime does not only result in a serious

crime of humanity and other derivative crimes, but also causes the increase of the quality of the crime and changes of patterns and behavior of the crime (UNODC, 2018). In Indonesia context, people smuggling, aside from affecting the state sovereignty and ideology, also threatens economic life, psychology, and social life, law enforcement, people health, and politics and government administration (Departemen Kriminologi Universitas Indonesia dan Jakarta Centre for Law Enforcement Cooperation (JCLEC, 2011). Therefore, as a response, Indonesia ratified UN Protocol against the Smuggling of Migrants through Land, Sea, and Air in LAW Number 15 Year 2009. This ratification shows Indonesia's commitment to prevent and combat the activity of people smuggling. However, in practice, many corruption cases and the inability of the system and legal instruments in Indonesia to prevent and handle the crime of people smuggling has caused the process of law enforcement to become ineffective leading to benefit the crime which cost a lot for the people (Gallagher, & McAuliffe, 2016).

UN Protocol against the Smuggling of Migrants through Land, Sea, and Air is a pivotal historical moment. This Protocol has provided international community an internationally and legally binding instrument. This protocol also regulates the obligations of the countries related to international cooperation in terms of investigation and punishment and also in terms of preventive efforts and protection for the people smuggled (Protocol against the Smuggling of Migrants by Land Air and Sea, 2000). Article 3 UN protocol against the Smuggling of

Migrants defines "smuggling of migrants" as: "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State of which the person is not a national or a permanent resident. "

It is clear that the aim of UN Protocol to combat Migrants Smuggling is not to stop illegal migration, but to combat the offenders of organized crimes taking advantage of vulnerable people. The offenders of "Smuggling" crime are not those vulnerable groups.

Theoretically, this study refers to some theories below. First, the theory by La Patra that Crime Policy will be effective if it is able to reduce crime, either as prevention of crime or as rehabilitation to the criminals (rehabilitation of criminals) (Muladi, & Arief, 1998). Second is the legal system theory by Lawrence Friedmann which is legal substance, legal structure, and legal culture (Friedmann, 1981). There must be change of orientation or paradigm in policy makers in order to improve the performance of legal system in Indonesia. The improvement of law enforcement should not focus only on the effort to make more legislations and the organization structures existing anymore, but also, what is important, how to ensure that both efforts correlates and have real impact on the change of legal culture and the practice of law enforcement. Third, considering that Indonesia bound to international agreement, it is necessary to examine the relation between international law and national law through the theory of Dualisms and Monism (Suwardi, 1990).

The novelty of this study is to identify the map and scope of people smuggling crime in Indonesia and also the roles of every party based on UN Protocol concerning Migrants Smuggling which has been ratified. The experience of law enforcers (best practice) in Indonesia and other countries are as reference to construct the model of law enforcement to combat people smuggling in Indonesia. There have been some similar researches with different point of views and purposes, such as the one conducted by Desbby Kristin and Tri Isana Chloryn Dewi concerning People Smuggling Crime in Indonesia (Kristin, & Dewi, 2017). This study focuses on the mapping of the number of illegal immigrants and cases aiming to identify Indonesia's and Australia's role and its problems in performing their obligations concerning the implementation of Organized Transnational Crime Convention. Another research by Martha Evelyn Jullianthy, Dahlan Ali and Mudjibusalim entitled Criminal Policy in People Smuggling in Indonesia (Julianthy, Ali, & Mudjibussalim, 2014) focuses on the issue of people smuggling seen from criminal policies. However, this study did not use related International Agreement as the parameter to examine criminal policy of handling people smuggling. A research conducted by Enrico Lanza and Maria Antonella Pasculli concerning the condition of foreigners in People Smuggling. This study views relations of Illegal Immigration, human trafficking, and human smuggling with analysis focusing on Foreigners by comparing Italy's national law with Europe's Law and other International Legal instruments (Lanza, & Pasculli, 2012).

From its context, this research belongs to the study of substantive domain of applicative law enforcement by taking into account legislations related to people smuggling crime. Its practice of the law enforcement is in the form of identifying a number of problems causing the ineffectiveness in handling people smuggling by taking into account the relation between legal substance, legal structure and also people participation in regional approach. This is different from a study by Eva John on Indonesia's Policy of Illegal Immigrants (Johan, 2013) or another study by Andi Aina Ilmih concerning The Analysis of Immigration Policy in People Smuggling in Indonesia (Ilmih, 2017).

B. RESEARCH METHOD

This study is the type of research which intends find legal regulation, legal principles, and legal doctrine to tackle legal issues confronted (Marzuki, 2010) by examining written law from various aspects, namely, theoretical aspect, historical aspect, philosophical aspect, comparison, structure and composition, scope and content, consistence, general elucidation and articles, formality and binding strength of a legislation as well as legal language used (Muhammad, 2004). This method is in accordance with the science of law which is prescriptive. This means that law is seen as a social norm not as social phenomenon. As a legal research, the technique used to collect data was based on literature and documents related to the object of the research (Soemitro, 1982).

Sources of data were, first, primary legal sources consisting of Law/LAW Number 15 year 2009 concerning The ratification of UN Protocol against Migrants Smuggling through Land, Sea, and Air and LAW Number 6 Year 2011 concerning Immigration. The second, secondary legal sources consisted of case study, literature study, books, law journals, scholars' opinion, and results of symposium. The third, Tertiary legal sources as supporting sources consisted of Law Dictionary, Dictionary of Bahasa Indonesia (KBBI), Dictionary Of English Language, and encyclopedia (Soekanto, & Mamudji, 1995).

This study referred to Guba and Lincoln (Guba, & Lincoln, 2009), seen from paradigm (Salim, 2001) which was not interchangeable with other paradigms (Indarti, 2005), contextual (Rahardjo, 2002) and having its own history. This paradigm is in accordance with socio-legal research to explain the working of law in people's daily life (Irianto, 2011) by connecting external factors beyond law, such as, social, economic, political, and cultural factors in order to examine how those factors apply in law (Samekto, 2012) through the observation of hermeneutic approach (Hamidi, 2005), in texts and context blended in a horizon fusion to be contextualized (Suseno, 2010), in order to find hidden meaning so that interpretation is made.

This study employed three approaches to examine the data. The first was statute approach. This is an approach done by viewing law as a closed system which is comprehensive, all-inclusive, and systematic (Ibrahim, 2006) in understanding

hierarchy, principles in legislation concerning the scope of law enforcement in people smuggling in Indonesia and other countries in regional perspective . The second is philosophical approach. This approach studies legal issue in normative research radically, in depth, and essentially (Marzuki, 2010). The third is conceptual approach. This means that a research should not ignore existing legal regulation in examining legal concept and the best practice of law enforcement from various countries according to the view of some experts and legal doctrine so that it helps researchers to design an alternative model of people smuggling law enforcement (Faisal, 1990).

This study applied some methods to analyze the data. The first was descriptive qualitative analysis method using deductive reasoning to understand the contents of a regulation as precise as possible so that interpretation can be made (Sidharta, 2000). The second was the analysis of Law Enforcement through case study of people smuggling so that the map/anatomy of people smuggling is identified. The third is comparative analysis. Comparative analysis is to compare the result of descriptive qualitative analysis with deductive reasoning by explaining the weakness and strength of the best practice of law enforcement in Indonesia and other countries. The fourth was model preparation analysis by "synchronizing" best practice with various stages of law enforcement crystallized in legal scope and basic principle of law enforcement applicative referring to Law Number 15 Year 2009.

C. RESULT AND DISCUSSION

1. Map of People Smuggling in Indonesia

Migration has been a common phenomenon because of forced situation under armed conflict, political conflict or poverty. Migrants must experience a life threatening process and violate laws. This effort to migrate is often taken for granted by the criminals of organized crime to take advantage by charging some those migrants some money (Miller, & Baumeister, 2013).

In South Asia region, the involvement of officers or law enforcers who are corrupt has contributed to the success of people smuggling crime (Gallagher, & McAuliffe, 2016). Smugglers gain their big power through underground moves. They only provided poor transportation facility to transport the migrants. Many migrants who were smuggled did not survive during the transport or were abandoned.

a. Profile of The Migrants

First, profile of migrants in Indonesia as a transit country. UNODC reported that (UNODC, 2018) the migrants were smuggled to Australia. Most of them were asylum seekers in the hope to build a better life. They were from Myanmar, Sri Lanka, Bangladesh, Iran, and a few of them were from conflict countries in Asia such as Afghanistan and Pakistan. Geopolitical situation in Asia triggers surge of migrants and people smuggling every year. In UNODC record, economic factor and political conflict and war in Rohingya, Afghanistan, Syria, Iraq, and Iran have made people smuggling a promising business.

Second, profile of Indonesian migrants as the source country. According to UNODC report (UNODC,2018), motive to obtain well-paid employment has promoted people smuggling to Malaysia (Killias, 2010) and some Middle East countries. They were working age children who were willing to work in another country with higher currency value. These young children mostly were young women lacking of skill, having low education, and even not mastering any foreign language. They were smuggled by using fake identity, forging immigration documents or using visit visa. Their number was pretty significant considering that the practice of people smuggling is closely related to economic issue, conflict, and war in that migration become one of the promising solution (Latt, 2013).

b. Route of People Smuggling via Indonesia

According to the report of United Nations Office on Drugs and Crime (UNODC, 2018), concerning Migrant Smuggling In Asia and The Pacific: Current Trends and Challenges. The migrants who came to Indonesia were from Iran, Pakistan, Bangladesh, Myanmar, and Iraq (Hoffman, 2011) with Australia as their final destiny. Until 2013, Tamil Sri Lanka citizens had been smuggled to Australia through two routes, via Indonesia and straight to Australia by sea. Some migrants also travelled by air through Sri Lanka to Bangkok or Kuala Lumpur then taking ship to Sumatra Indonesia to continue their trip via sea or land to Java island. They transited in Indonesia to wait for their transportation to Australia by sea. East part of Java island became the main location where the migrants

were transported to Australia by the smugglers. This location was chosen because it is the shortest sea trip to Australia. It also found that some migrants were transported by airplane to Indonesia, and then the smugglers arranged their journey to Australia by ship. Until 2014, Indonesia was the main embarkation for migrants smuggling to Australia. Only small number of immigrants from Sri Lanka were smuggled through air travel. Some reports also revealed that the smugglers also smuggled Bangladesh and Indian immigrants to Australia although only in a small number. It is most likely that they migrated through sea route via Malaysia and Indonesia or in a small number of cases through air route straight to Australia.

The document aforementioned is relevant with the data of TNCC Bareskrim Mabes POLRI (Police of The Republic of Indonesia) in 2011 reporting that as many as 2010 illegal immigrants were arrested by The Police of The Republic of Indonesia (Polri) in 2011. The highest number of illegal migrants arrested was in Police Unit of South East Nusa Tenggara Province (POLDA NTT) with the total of 272 immigrants. While the lowest number of immigrants who were arrested was in West Kalimantan Police Unit (POLDA Kalimantan Barat) with the total of 6 immigrants. These number are quite reasonable because, geographically, East Nusa Tenggara province is the nearest route to Australia. From TNCC Bareskrim Mabes POLRI report, in 2011, due to the fact that Indonesia has large range of area and thousands islands, it is most likely that criminals of people smuggling indeed transited several times in

the region of Indonesia. Based on the time of the illegal immigrant arrest, it seems that February was the month with the highest illegal immigrant arrest, with the total of 225 immigrants. It is necessary to examine this data further in order to identify its main factors so that certain patterns in the process of illegal migration, most likely suspected as people smuggling, can be identified (Koser, 2010).

Meanwhile, according to representative office of United Nations High Commissioner for Refugees (UNHCR, 2013), in Indonesia, until 31st August 2013 they handled as many as 11,123 people, who most of them were from Afghanistan, Myanmar, Somalia, Sri Lanka, and Iran. Among those numbers, only 1,656 people were placed in Immigration Detention Center all over Indonesia. The rest blended with local people.

c. Risk Factors

The risk of migration by sea from Bangladesh or Sri Lanka is quite high because of over capacity, unsafe sea travel, and the risk of machine failure of the ship or the risk of storm along the way. Some passengers did bring enough food, and water. Also, there were not enough safety jackets for all the passengers listed. UNODC (UNODC, 2018) in its report in 2018 stated that "The maritime journey risks are at times exacerbated by the fact that smugglers may encourage migration during monsoon season and use unseaworthy vessels in response to immigration controls, such as increased border control of boats".

Until in mid-2015, it is estimated that 1000 migrants from Bangladesh and Rohingya died in an

attempt to cross Andaman Sea since 2014. The report revealed that overcapacity, no supply of food and drink, poor sanitation and no medicine for even emergency case available were the main causes. In addition, the unclear status of people smuggling from North Asia in some destination countries has made the migrants vulnerable to be molested, exploited as unpaid workers. Their documents were also stripped from them. The worst case was that they got trapped in a debt and in human trafficking. In some cases, the smugglers would charge extra money from the migrants. For that reason, there are many migrants found in exploitative condition in transit country or even in destination country.

2. Law Enforcement of People Smuggling Crime in Indonesia

a. Handling Policy of People Smuggling in Indonesia

Indonesia has ratified UN Protocol against Migrants Smuggling with Law Number 15 Year 2009. Previously, Indonesia government has also ratified its main instrument, which is the United Nations Conventions against Transnational Organized Crime with Law Number 5 Year 2009. Ratification of the convention and protocol shows Indonesia Government commitment to prevent and combat people smuggling crime. Indonesia government has followed it up by performing harmonization or legislations, including ratifying Law Number 6 Year 2011 concerning Immigration which is a revision of Law Number 9 Year 1992. The significant change is to categorize people smuggling as a crime by referring to the Protocol against Migrants Smuggling

through Land, Sea, and Air. Definition of people smuggling crime is in Law Number 6 Year 2011.

Indonesia government has also built cooperation in Asia Pacific region to combat people smuggling. Indonesia together with more than 45 countries in Asia Pacific, including the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC), formed The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime in 2002 (Aryanti, & Leksono, 2017), far before Indonesia ratifying the Convention against Transnational Organized Crime and Protocol against Migrants smuggling.

b. Law Enforcement of People Smuggling in Indonesia: A case study of Supreme Court and Tulungagung case.

First. Related with decision of Supreme Court Number 523K/PID/2008 punished Sinthamparapillai Santhira babu a.k.a Babu, a citizen of Sri Lanka with 2 years in jail and charged with Rp. 30,000,000 (thirty million). Babu was proven guilty of committing, on purpose, forgery of documents or visa or permit of immigration to enter or be in Indonesia area.

The handling of people smuggling, aforementioned, "only" using Laws concerning Immigration arises questions. Due to the fact that in the case of smuggling 119 Sri Lanka people, the crime of money laundry was also found, crime of credit card and Automatic Teller Machine (ATM). The punishment of Appeal Assembly in this case study is

not enough to give deterrent effect to offenders of people smuggling.

Second is people smuggling in Indonesia in the beginning of December 2011 in Tulungagung District, East Java. This case was revealed after KM Barokah ship which transported 250 immigrants from Middle East heading to Australia was wrecked in Indian Ocean not long after departing from Popoh Beach Tulungagung before they had chance to transport the passengers into a much bigger ship in the middle of the sea. From Police investigation, it is revealed that the process of people smuggling involved the roles of many people, neatly structured with each separated task. There was an indication of corruption and authority misuse by government officer and local law enforces (Jayasuriya, & Sunam, 2016). In Court Fact, those immigrants each paid , USD 4000 s/d 4.500 to the Kedungwaru Koramil civil servant employee who arranged their departure starting from Mampang South Jakarta with destination in Australia trough Popoh Beach Tullungagung East Java.

In practice, the civil servant employee of Koramil Kedungwaru involved three Tulungagung army personnel as guards in the departure point along with two ship crews of fisherman ship to take the immigrants and to rent their ship for this purpose in condition that the money was paid before the execution. The money will be completely paid after each of them completed their task. In the trial process, the offenders were charged with Article 120 (10) Law No. 6 year 2011 in conjunction with Article

55 Criminal code concerning participation crime in people smuggling crime.

From the two cases, the roles of each party can be elaborated further by referring to United Nations Office in Drugs and Crime (UNODC, 2010).

(1) Map of Role of Each Offender of People Smuggling Crime.

Chronologically, roles of offender of people smuggling were various according to each function. First, Babu and Koramil Kedungwaru Civil Servant Employee were acted as the receiver of the first order of people smuggling. He was the organizer or coordinators of the crime. He was the one who was fully in charge of the operation of the crime (Schloenhardt, 2011). In this case, he was in charge of arranging and communicating all processes of people smuggling among all the parties involved. .

Second, Recruiters. Recruiters were the one who acted as the communicator between migrants and organizer. Main role of recruiters is to recruit or look for migrants (clients) to be smuggled to other countries. They usually came to the location which they usually visited (Nyst, & Coyne, 2017). In the context of this case, the role of recruiters was not obvious. Thus, it is necessary to investigate the possibility of the offenders who were on the run.

Third, Transporter or Guides. This person guided and transported people who were smuggled. This person moved the migrants from one place to another. This role was performed by two ship crews and bus crews, transporting migrants from Mampang Jakarta to Popog beach in Tulungagung. As a guide, it seems that the roles of the criminals arrested had

not been revealed. Specifically, guide was the central role to distribute trusted information within their networks.

Fourth, Spotters or Enforcer. This person had a role to provide support to the process of people smuggling such as giving specific information about police inspection and the security in the border and also providing protection for the business of people smuggling. In Tulungagung case, three members of Indonesian Army in Koramil Besuki acted as security guards of the immigrants during the travel. Spotters/enforcers were also in charge of securing departure location. Meanwhile, ship crews had role to take the immigrants to the middle of the sea before transporting them to a much bigger vessel heading to Australia territory. It is possible that the spotters/enforcers helped ease the permit in the port.

Fifth, Service Provider and Supplier. They were the key actors. It is not easy to find and identify them because their location was unknown and the other four positions did not recognize them or each other. Their main role was to communicate directly to migrants and make certain agreement to gain profit. As a service provider and supplier, they were in charge of providing accommodation and transportation, arranging route and schedule of departure and any other assuring promise. Supplier and service provider may not be found in the location which is passed by the migrants. However, they may be found in outside the route, they can be anywhere but around the migrants' route.

Investigators' ability to recognize the role and function of the offenders will only help them reveal

the organization of the smuggling. This ability will also help them identify charges for the offenders. Failure to recognize the roles and function of each offender will affect the charge given to the offenders. To put it simple, the confession of offenders either in mass media or as a result of police initial investigation needs further examination. There was missing link that could not be explained by the offenders arrested in each network. Law enforcers must be convinced that the offenders were not working individually and operated only in one certain area. The process of smuggling is always transnational and involves organized actors since the process of transporting from the source country, transit country, and to destination country. It is necessary to collect information in depth about the role of the organizer or coordinator and recruiters. They were the ones who decided and recruited the other positions in this people smuggling crime.

The author suggests that the civil servant in Koramil Kedungwaru was not the one who accepted the main order of people smuggling in this case. It is observed that law enforcement for this case only focused and ended on the field executors, and denying the fact that people smuggling is a crime which is committed by an organized actors. The actors of Tulungagung offenders could not explain who provide the vessel waiting in the middle of the sea, how the immigrants entered the Australia sea territory, and who was in charge of taking the immigrants to Australia after all their tasks in Tulungagung were done. From here, it is clear that the offenders who were arrested were only field

executors. They accepted the order, but they did not accept the main order.

(2) Distribution of Case Cost of People Smuggling

From Tulungagung case, based on money distribution used for smuggling people, in his confession, the civil servant in Koramil Kedungwaru received Rp 10,000,000,00 as payment; with down payment as much as Rp 7,000,000,00 while the rest of the money were paid fully after the task completed. The other three Indonesian Army personnel received Rp. 3,000,000 each as payment; and the ship crews received payment as much as Rp . 10,000,000; from this confession, Tulungagung network in total received Rp. 29,000,000,00. This amount was not included the cost of bus trip from Jakarta to Popoh beach Tulungagung and other cost which has not been revealed.

The offenders were telling the truth because they did not know who else received the money other than them due to the fact that the amount of the money they received was small amount compared to the amount of money paid by the immigrants. This assumption is based on the confession of the immigrants who had spent at least USD 4,000,000 up to USD 4,500; per person to the smugglers in order to be transport to Australia as the final destination. Based on this confession, the total cost paid by the immigrants to the smuggler can reach up to Rp 13,000,000,000; (thirteen billion Rupiah) with assumption that the immigrants which were 250 persons in total paid at least @USD.4, 000, if using exchange value 1 USD equal to Rp. 13,000; then each immigrant must pay Rp. 52,000,000,00; to the

network of smugglers. The total was Rp. 13,000,000,000; or equal to USD. 1,000,000 (one million dollar). This amount was huge compared with how much money received by Tuungagung network.

From the elaboration aforementioned, it can be assured that Tulungagung Network was only one of technical actors of a massive people smuggling organization. It seems that each of them did not know each other, worked based on certain task, and was not shared mutual information among each other level of task. At this point, the author is quite sure that the offenders of people smuggling were the ones as service provider or organized supplier. They were the ones who earned direct profit from the crime, and up to now, they have been arrested.

(3) Provision of People Smuggling Crime in Indonesia

Offenders of people smuggling crime are each charged with participation in people smuggling crime by referring to Article 120 (1) LAW No. 6 Year 2011 in conjunction with Article 55 Criminal Code. The Criminal sanction for People Smuggling Crime according to Law Number 6 Year 2011 Article 120 is minimum 5 years sentence and maximum 15 years sentence and minimum Rp. 500,000,000,00 fine (five hundred million Rupiah) and maximum Rp. 1,500,000,000,00 fine (one billion five hundred million Rupiah). If the crime is committed by corporation or criminal organization, the punishment is only in the form of fine as much as three times of the amount of fine stipulated in Article 120.

The amount of fine charge to criminal organization is only three times as much as fine

stipulated in Law Number 6 Year 2011. This is considered "small" amount compared to the amount of money the immigrants give to service provider/supplier. Although this argument can be the main parameter in setting the fine, the spirit of Law No. 6 Year 2011 as responsive law emphasizes that it is necessary to determine the amount of fine based on currency value which applies internationally. The adaptation of fine which refers to international currency value is an effort to stop people smuggling criminals in committing their crime, or at least make the fine penalty equal to the legal risk that they will accept if they are arrested.

The process of law enforcement aforementioned is still considered very local and superficial. Seen from the scope of the case, the implementation of the punishment for the offenders is still in the form of punishment for administration violation of immigration which only refers to Law number 6 Year 2011. Although there is in conduction with criminal violation referring to criminal code, but the Articles are the articles of participation and or together. Therefore, from the result of investigation and the provision of criminal punishment, law enforcement of people smuggling has not been integrated with other law enforcement attempts as a form of participation in a crime of People Smuggling. The law enforcement covers crimes listed in KUHP/ Criminal Code and other special Laws consisting of: crime of human trafficking and slavery, corruption and money laundry, violence, exploitation and sexual assault, narcotics, arms trafficking and other types of crimes which are related to Transnational Organized

Crime - TOC (Setiyana, 2017). Therefore, law enforcement of people smuggling in Indonesia has not touched the main actor of people smuggling crime, who, in this case, is the organizer, service provider, and supplier.

c. The Challenge of Law Enforcement in Handling People Smuggling in Indonesia

Law enforcement of Transnational Organized Crime-TOC of people smuggling (Castle, 1997) has not reflected the nature of responsive law, which seeks for implied values conveyed in regulations and policies and which is aimed to realize ideas of justice, legal certain, and utility . Thus, the factors which construct the model of law enforcement in handling people smuggling cover the following scopes: First; The factor of legal material of people smuggling stipulated in Law No 6 Year 2011 and Government Ordinance No 31 Year 2013 concerning Immigration only in Article 120. This is different from the human trafficking crime which is separately regulated in Law Number 21 Year 2007. Meanwhile, in Criminal Code, as a legal reference besides Immigration Law), in history there is not even one sentence which explicitly mentions the term people smuggling, smugglers, smuggling or smuggled. In addition, it is also the same case in emergency Law Number 8 Year 1955 containing eight removal articles of Article 241 sub I and Article 257 Wetboek van Strafrecht voor Nederlandsce Indie (Criminal Code).

However, people smuggling crime is potentially to be followed with other types of crimes such as human trafficking, corruption, money laundry, violence, and sexual harassment, narcotics, and

other types of crimes. This fact will allow the offenders to be charged with multiple accounts, not only with people smuggling crime. Second, factor of law enforcers. The law enforcers are highly influenced by the competence of the apparatus. Police, Immigration, Prosecutors, Judges, and Correctional Facilities have not had qualified human resources who understand the crime of people smuggling in legal term, human rights term, international geo-politics, and state defense. Commonly, the punishment of people smuggling offenders is light because it is only considered an administrative violation.

On the other side, Guidelines of Handling People Smuggling Crime issued by Attorney General, Ministry of Law and Human Rights, Police of The Republic of Indonesia, and International Organization for Migration (IOM) indicates that there is strong reluctance in Police Unit investigators to handle cases of people smuggling because Police think that it is the authority of civil servant investigators (PPNS) of Immigration to handle such cases. Poor coordination between pro justitia handling and non-justitia handling has caused confusion between who should lead the handling of people smuggling case, consequently, it is quite common to involve foreign party and other department to handle this. (IOM, 2012). The apparatus's lack of understanding in Criminal Code, Law Number 2 Year 2002 concerning Police, Law Number 15 Year 2009, and Law Number 6 Year 2011 concerning Immigration has caused ineffectiveness in law enforcement.

Third, the factor is supporting facilities, adequate human resources who are educated and skilled; support from Police, Immigration, Prosecutors, Judges, and proper correctional facility; tools as well as enough budgets. Those main issues are head to head with the large territorial region of Indonesia and the availability of modern technology. Fourth, the factor of people participation Preventive action of people smuggling crime still focuses only on certain regions. People in a prone area have not been involved. Integration of people's participation by Police of the Republic of Indonesia can be realized through Community Policing Program (POLMAS).

3. Developing Model of People Smuggling Law Enforcement

Theoretically, the developing concept of people smuggling law enforcement model is based on the result of the analysis of law enforcement compared to theories mentioned in the introduction chapter. The first theory is by La Patra about "Crime Policy". Law enforcement of people smuggling crime in Indonesia is not effective because it has not been able to reduce the crime either in the form of prevention of crime or rehabilitation for criminals. Therefore, in the practice of law, there is gap between concept and practice of law enforcement because the law has not been able to punish the offenders of organized transnational smuggling. The conception of crime policy theory is not fulfilled during the law enforcement process in the aforementioned cases.

The second theory refers to the theory of three elements consisting of legal substance, legal structure, and legal culture. There has not been any

change of paradigm from policy makers in an effort to maximize law performance in Indonesia as demanded by UN Protocol concerning Migrants Smuggling which has been ratified. Stages of law enforcement only end in punishment. There has been any intention to examine further the implementation of law enforcement in the case of people smuggling. It is clear that the legislations have not been supported by qualified human resources. The legislations also have not been integrated with people's interest and needs. It is clear that there has not been gap of adequate correlation between legislations and the structure of organization leading to the change of culture in law enforcement.

Referring to the theory of Dualism and Monism, it is indicated that the ratification of UN Protocol concerning Migrants Smuggling has not been followed by other instruments which align the need to implement the ratification of Law Number 15 Year 2009. The paradigm of law enforcement in people smuggling case is still far from regional perspective, transnational and aligned between Indonesia law and international law. Thus, the case approach was very local, partial and losing the substance context that people smuggling is an organized transnational crime.

Based on the aforementioned explanation, an alternative model is needed for law enforcement in human smuggling crimes. Furthermore, to develop this alternative model, it is necessary to carry out the following efforts: First, legal substance, legal structure, and legal culture. The main direction is to improve law and law enforcers, to provide adequate

sources and facilities, and to gain the support from the people as well as to manage data base and information.

Second, assuring the implementation of Policy Crime in every level of law enforcement, particularly by providing education to change the paradigm and to build synergy among law enforcers related to people smuggling. Third, adapting perspective of Dualism and Monism Theory of national and internasional policy. Technically, the concept of designing a law enforcement model can be done in task force or trained work unit which is placed in strategic region in Indonesia. This trained task force is a cross-departmental unit (consisting of trained personnel from Police, Immigration, Prosecutor, Government, Society), and is supported in building strategic cooperation with neighboring countries. On the other side, Indonesia has had experience in forming task force within The Police of Indonesia, but with still with limited authority and ability.

Fourth, optimizing the initiative of regional cooperation by positioning Indonesia as a country which is concerned with the law enforcement of people smuggling and other transnational crimes. This initiative is also able to generate other initiatives which strengthen regional cooperation in the area,

D. CONCLUSION

First, Scope Map of people smuggling crime in Indonesia has not been available as referred to the standard of UN Protocol concerning Migrants Smuggling in Land, Sea and Air which has been ratified in Law Number 15 Year 2009. Law enforcers'

lack of knowledge about the map of people smuggling scope affects directly substance of law enforcement process for offenders of organized transnational smuggling.

Second, Law enforcement of people smuggling crime has not directly touched the offenders of organized transnational smuggling. In addition, it also has been partial, incidental, and local thus it has not been aligned with Law Number 15 Year 2009 concerning The Ratification of UN Protocol on Migrants Smuggling and Law Number 6 Year 2011 concerning Immigration. The factors are legal substance, law enforcement, poor facilities and infrastructures, and lack of sources as well as lack of initiative from the people to take part in helping overcome this crime.

Third, The preparation of model of people smuggling crime law enforcement focuses on the support in the scope of first, legal substance, The second is in the scope of law enforcers. The third is in the scope of facilities and sources. The fourth is in the scope of people's role in the perspective of regional area.

REFERENCE

JOURNALS

- Aryanti, Jeanita Eka., & Leksono, Handoyo. (2017). Penerapan Prinsip Shared Responsibility sebagai Upaya Dalam Penanggulangan Kejahatan Transnasional di Kawasan Asia Tenggara. *Belli Ac Pacis; Jurnal Hukum Internasional*, Vol.3, (No.2), pp.27-36.
- Hoffman, S. (2011). Living in Limbo: Iraqi Refugees in Indonesia. *Refuge: Canada's Journal on Refugees*, Vol.28, (No.1), pp.15-24.
- Ilmih, Andi A., (2017). Analisis Kebijakan Keimigrasian dalam Upaya Penyelundupan Orang dan Imigran Gelap di Indonesia. *Law Research Review Quarterly*, Vol.3, (No.2), pp.135–148.
- Johan, E. (2013). Kebijakan Indonesia terhadap Imigran Ilegal dan Hubungannya dengan Kedaulatan Negara. *Yuridika*, Vol.28, (No.1), pp.1–12.
- Julianthy, Martha Evelyn., Ali, Dahlan., & Mudjibussalim. (2014). Kebijakan Kriminal dalam Penanggulangan Penyelundupan Manusia di Indonesia. *Jurnal Ilmu Hukum Universitas Syiah Kuala*, Vol.2, (No.2), pp.41–50.
- Kristin, Debby., & Dewi, Tri Isana Chloryn. (2017). Tindak Pidana Penyelundupan Manusia (People Smuggling) di Indonesia: Tanggung Jawab Indonesia dan Australia. *Padjadjaran Journal of International Law*, Vol.1, (No.1), pp. 84–100.
- Killias, O. (2010). "Illegal" Migration as Resistance: Legality, Morality and Coercion in Indonesian Domestic Worker Migration to Malaysia. *Asian Journal of Social Science*, Vol.38, (No.6), pp. 897–914.
- Koser, K. (2010). Dimensions and Dynamics of Irregular Migration. *Population, Space and Place*, Vol.16, (No.3), pp. 181–193.

- Lanza, Enrico, & Pasculli, Maria Antonella. (2012). The Condition of Foreigner as a Contact Between Illegal Immigration and Trafficking in Human Beings/Smuggling of Migrants: A Report About Italian Legislation. *International Journal of Humanities and Social Science*, Vol.2, (No.19), pp. 102–114.
- Latt, Sai W. (2013). Managing Migration in the Greater Mekong Subregion: Regulation, Extra-Legal Relation and Extortion. *Singapore Journal of Tropical Geography*, Vol. 34, (No.1), pp. 40–56.
- Miller, Rebecca., & Baumeister, Sebastian. (2013). Managing Migration: Is Border Control Fundamental to Anti-Trafficking and Anti-Smuggling Interventions. *Anti-Trafficking Review*, Vol.2, pp. 15 -32.
- ARTICLE & WORKING PAPERS
- Nyst, Madeline., & Coyne, John. (2017). People Smuggling in Southeast Asia, in *People Smugglers globally. Strategy*, ASPI (Australian Strategic Policy Institute), pp. 12–17.
- Suwardi, Sri S. (1990). Masalah-masalah Hukum Perjanjian Internasional. Makalah pada Fakultas Pasca Sarjana Bidang Hukum Internasional Universitas Pajajaran, p. 5.
- Schloenhardt, A. (2011). Migrant Smuggling and Organized Crime in Australia. Research Paper September 2011. The University of Queensland, Australia, pp. 1-23.
- Castle, A. (1997). Transnational Organized Crime and International Security. Working Paper No.19, November 1997. Institute of International Relations The University of British Columbia, pp. 7–11.
- Indarti, E. (2005). Penyusunan Karya Tulis Ilmiah Bidang Hukum. Materi Pelatihan Penulisan karya Ilmiah Bagi Mahasiswa, Fakultas Hukum Universitas Diponegoro Semarang, p.12.
- RESEARCH REPORTS
- Departemen Kriminologi Universitas Indonesia dan Jakarta Centre for Law Enforcement Cooperation (JCLEC). (2011). Tinjauan Kritis Terhadap Penyelundupan Manusia di Indonesia dan Berbagai Dampaknya.
- Gallagher, Anne., & Mc Auliffe, Mary. (2016) "South-East Asia and Australia", in *Migrant Smuggling Data and Research, a global review of the emerging evidence base*. International Organization for Migration, Geneva.
- Internasional Organization for Migration (IOM). (2012). Petunjuk Penanganan Tindak Pidana Penyelundupan Manusia Pencegatan Penyidikan Penuntutan dan Koordinasi di Indonesia.
- Jayasuriya, Dinuk., & Sunam, Ramesh. (2016). "South Asia: Migrant smuggling data and research", a global review of the emerging evidence base. International Organization for Migration.
- Protocol against the Smuggling of Migrants by Land Air and Sea. (2000). supplementing the UN Convention Against Transnational Organized Crime.

- United Nations Office on Drugs and Crime (UNODC). (2018). *Migrant Smuggling in Asia and the Pacific, Current Trends and Challenges*, Volume II.
- United Nation Office on Drugs and Crime (UNODC). (2010). *Issue Paper, a Short Introduction to Migrant Smuggling*.
- United Nations High Commissioner for Refugees (UNHCR). (2013). *Refugeess Definition and UNHCR Mandate in Cross-Cutting Issue with People Smuggling & Trafficking in Person*, Presentation JCLEC Semarang.
- Marzuki, Peter M. (2010). *Penelitian Hukum*, cetakan keenam. Jakarta: Kencana.
- Muhammad, A. (2004). *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti.
- Muladi., & Arief, Barda Nawawi. (1998). *Teori-teori dan Kebijakan Pidana*. Bandung: Alumni.
- Rahardjo, S. (2002). *Sosiologi Hukum, Perkembangan, Metode dan Pilihan Masalah*. Surakarta: Muhammadiyah University Press.
- Salim, A. *Teori dan Paradigma Penelitian Sosial*. (2001). Yogyakarta: Tiara Wacana.
- Samekto, A. (2012). *Ilmu Hukum dalam Perkembangan Pemikiran Post-Modernisme*. Lampung: Indepth Publishing.

BOOKS

- Guba, Egon Gotthold., & Lincoln, Yvonna Sessions. (2009). *Berbagai Paradigma yang Bersaing dalam Penelitian Kualitatif dalam Handbook of Qualitative Research*. Yogyakarta: Pustaka Pelajar.
- Faisal, S. (1990). *Penelitian Kualitatif: dasar-dasar dan Aplikasinya*. Malang: Yayasan Asah Asih Asuh.
- Friedmann, L. (1984). *American Law*. London: W.W Norton and Company.
- Hamidi, J. (2005). *Hermeneutika Hukum*. Yogyakarta: UII Press.
- Ibrahim, J. (2006). *Teori & Metodologi Penelitian Hukum Normatif*. Malang: Banyumedia.
- Irianto, S. (2011). *Memperkenalkan Studi Sosiolegal dan Implikasi Metodologisnya*, dalam buku *Metode Penelitian Hukum Konstelasi dan Refleksi*. Jakarta: Yayasan Pustaka Obor.
- Sidharta, Bernard A. (2000). *Refleksi Tentang Struktur Ilmu Hukum*. Bandung: Mandar Maju.
- Soemitro, Ronny H. (1982). *Metode Penelitian Hukum*. Jakarta: Ghalia Indonesia.
- Soekanto, Soerjono., & Mamudji, Sri. (1995). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta; Rajawali Press.
- Suseno, Anton F. (2010). *Dekonstruksi Hukum Eksplorasi Teks dan Model Pembacaan*. Yogyakarta: Genta Publishing.

ONLINE SOURCES

- Setiyana, R. *Kejahatan Lintas Negara*. Retrieved from http://www.academia.edu/11452140/Kejahatan_Lintas_Negara,