
The handling of people smuggling involving foreign nationals as efforts to safeguard Indonesian territories

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Abstract: This study aimed to investigate the responsibility of Indonesia as a transit country against foreigners who are involved in people smuggling crime in the territory of Indonesia. The approach method used in this research was the Juridical Sociological approach, which means that this study examined the problem by researching from the aspect of law science. In handling the crime of people smuggling involving foreigners, Indonesia has its own rules in the handling of smuggled foreigners. Therefore, there needs to be coordination with other related agencies. There is a difference in the handling of this people smuggling case. This research is one of the few studies that examine people smuggling, given Indonesia's geographic position that lies between two continents and two oceans make Indonesia a very strategic area, not only bringing positive impacts for the benefit of access to transnational commerce but also the international maritime path.

Keywords: people smuggling; foreign nationals; safeguard Indonesian territories; juridical sociological.

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1 Background

Indonesia's position which lies between two oceans and two continents makes Indonesia a strategic place for the movement and migration of foreigners from the Asian continent who want to go to Australia. In recent years, according to data provided by the United Nations High Commissioner for Refugees (UNHCR), Indonesia has received many new foreign refugees significantly. At the end of December 2019, the cumulative number of foreign refugees was 13.657 persons have been registered in Indonesia. The movement of

humans, or being called “migration”, is a consequence of human instinct that will seek comfort in their life, and avoid the fear which is very threatening to their safety (Wong and Bhatti, 2019). The threat can be caused by natural factors and other factors, such as human action. The threats included in the natural factor category are natural disasters, while those that include human actions are war, riots, and so on. In the past, the main impetus for migration at that time was generally derived from the instincts of humankind to find a place to live or a living area that could provide security and comfort. History records that the Canaanites (now Palestinians) have migrated from Asia to Europe, as did the Romans in their heyday and other nations (IOM, 2009).

In addition to the factors above, the effects of world developments such as globalisation and technological developments cause the flow of population migration to show a considerable increase over time. An increase in the flow of foreigners will certainly have a positive effect, such as increasing the amount of money spent in the country, increasing investments, and increasing trade activity leading to increased foreign exchange earnings. On the other hand, the negative effect of this event is the emergence of Transnational Organised Crime (UNTOC) (Santoso, 2007).

The current development, transnational crime is a crime that poses a serious threat to every country. This crime is governed by the United Nations Convention on Transnational Organised Crime (UNTOC), which was agreed in 2000. The scope of the Cross-Country Crime is as follows: Committed in more than one country; Committed in one country, but the necessary parts of preparatory, planning, directing or control activities take place in another country; Committed in one country but involves an organised criminal group engaged in criminal activity in more than one country; Committed in one country but has major consequences in another country.

When viewed from its scope, the crime causes the emergence of the term of origin country, a transit country and destination country. Transnational crime also has very complex characteristics. Therefore, countries need to enhance international cooperation to collectively cope with the increasing threat of transnational crime (Isharyanto, 2013). Various types of transnational crimes that are currently growing in practice are human trafficking, people smuggling, arms trafficking, drug trafficking, terrorism, cybercrime, illegal logging, and so forth.

The case of transnational crime that becomes a serious problem in Indonesia is people smuggling. Those who are called as Illegal Immigrants usually come from the region or the country with an unstable situation, for example, due to warfare or the country that can no longer provide security for its people (discrimination/human rights' violations), so some people choose to leave their countries, such as Myanmar, Afghanistan, Libya, Iraq, and some other Middle Eastern countries. Under the conditions of such a country, they seek to find a new, better country that can provide asylum. One of the countries that can provide asylum in Australia, New Zealand and Christmas Island (part of Australia). Thus, many of them (illegal immigrants) flocked by boat to Australia. Before Australia, New Zealand and Christmas Island, they often used the southern waters of Indonesia (south coast of Java) to transit to the countries. Sometimes, they also take a break and look for people to help them get to the waters of the destination country. Allegedly, there are related parties, either smuggler (domestic/foreign) or other parties where they are directly involved in the process of people smuggling.

A report released by the refugeecouncil.org.au; between 2006 and 2011, 14,215 persons seeking asylum by boat (Anonymous, 2019). On average, they pay 14,000 US dollars to the smugglers' syndicate. That is, the income earned by human smugglers' syndicate is about 85 million US dollars in a year. The huge benefits make people smuggling become a lucrative illegal business. Various attempts to facilitate illegal business are carried out. Generally, it is in the form of unlawful acts. Such actions hurt the security, social, economic, and legal sectors of Indonesia as a transit country (Nguyen, 2019). On average, smugglers here are foreign nationals where they use Indonesian citizens in the place of transit to help them by providing facilities to destination countries with high rewards. From the side of law enforcement, if they are caught, only Indonesian citizens who get sanction, while for foreign nationals, they can only be detained in Immigration Detention House. This is because Indonesia has not ratified the Convention on Refugee Status of 1951. Thus, Indonesia can only enact Act No. 6 of 2011 on Immigration.

The crime of people smuggling in UNTOC is set out specifically in the Protocol against the Smuggling of Migrants by Land, Sea and Air which has been ratified by Indonesia in law number 15 of 2009. As a country which is subject to the provisions, Indonesia shall be obliged to safeguard against illegal immigrants caught in Indonesian waters following article 9 paragraph (1) of the protocol against the smuggling of migrants by land, sea and air; the case of taking action against the vessel shall ensure security and the humane treatment of the persons in it, concerned with their needs, does not endanger the security of the ship and its cargo, and other safeguards. Another matter that becomes the responsibility of a country under protocol against the smuggling of migrants by land, sea and air is to assist migrants to return to their home country after their asylum is rejected by the destination country as provided for in article 18.

This research is one of the few studies that examine people smuggling, given Indonesia's geographic position that lies between two continents and two oceans makes Indonesia a very strategic area, not only bringing positive impacts for the benefit of access to transnational commerce but also the international maritime path. However, these geographical conditions also have a negative impact, especially in the context of transnational crimes, including human trafficking, people smuggling, arms trafficking, drug trafficking, terrorism, cybercrime, illegal logging and so forth. Indonesia's position in transnational crime is considered the most vulnerable because Indonesia's bad economic condition, the geographical condition of Indonesia as an archipelagic country is also one of the targets for a transit point to reach the destination country (Alibekova et al., 2019). Therefore, Indonesia plays an active role in international cooperation in tackling transnational crime. Then, for the form of responsibility and commitment as a state party, the government already has some laws and regulations related to the prevention of transnational crimes that adopt or in line with the standards and norms outlined in existing conventions and protocols.

Based on the facts above, this study aimed to investigate the responsibility of Indonesia as a transit country against foreigners who are involved in people smuggling crime in the territory of Indonesia. Several previous studies have examined People Smuggling, Foreign Nationals, and Safeguard Indonesian Territories (e.g. Limba et al., 2019; Hutahayan and Wahyono, 2019; Fernandes and Solimun, 2017; Solimun and Fernandes, 2017; Indarti et al., 2017; Fernandes and Fresly, 2017; Bassiouni, 1986; Soekanto, 1986; Nainggolan, 2009; Canberra, 2000).

2 Literature review

The opinion expressed by Bassiouni (1986), author of International Criminal Law, stated that transnational crime was an international crime which contained three elements, namely: international elements, transnational elements, and necessary elements. International elements consisted of elements of a direct threat to world peace; indirect threats to world peace and security in the world; and destabilisation of humanity. Transnational elements consisted of elements or actions that had an impact on more than one country, actions involving or impacting citizens from more than one country, and the means of infrastructure and methods used that transcended the territorial boundaries of a country. Necessity elements consisted of the elements of the need for cooperation between countries to do the countermeasures. With this definition of understanding, it can be seen that transnational crime was a crime that did not recognise the territorial borders of a country (borderless).

The United Nations (UN) has ratified the Convention on the Transnational Organised Crime (UNTOC), known as the Palermo Convention at the 62nd Plenary Meeting of 15 November 2000. The Convention had 3 (three) Protocols supplementing the Convention, namely: (i) Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention Against Transnational Organised Crime (UNTOC); (ii) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime; (iii) Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention Against Transnational Organised Crime (UNTOC).

In its development, Transnational Crimes are experiencing the development of the type, modus operandi, manner, method, and impact for the international community. One of the transnational crimes that are still an issue of the international community is related to asylum seekers involved in People Smuggling.

Besides, according to Law No. 6 of 2011 on Immigration article 1, it was stated that people smuggling was an act that aimed to gain profit, either directly or indirectly, for oneself or for others who brought a person or group of people, either organised or unorganised, or ordering others to bring a person or group of people, whether organised or unorganised, who had no right to enter Indonesian territory or exit the territory of Indonesia and/or enter the territory of another country to which the person had no right to enter the territory legally, either by using valid documents or false documents, or without using the Travel Document, either through immigration checks or not.

3 Research methods

The type of research that researchers used was Juridical Empirical research. Juridical Empirical is a study reviewed through legal aspects, in this case, the rules that are then associated with the reality or practice that occurred in the field. Juridical Empirical Research is a research conducted in the community with the intent and purpose to find the fact (fact-finding), then followed by finding the problem (problem finding), to the identification of the problem (problem identification) and the last stage is to find problem-solving (problem-solution) (Soekanto, 1986).

The approach method used in this research was the Juridical Sociological approach, which means that this study examined the problem by researching from the aspect of law science (Soemirto, 1998). Assessments were made more directed to the problems of people smuggling in Indonesia and Indonesia's efforts to address them and safeguard Indonesian territory.

The location for conducting this research was government agencies that were stakeholders for the mechanism of handling of people smuggling crimes involving foreigners and security of Indonesian territory. The location of the research was conducted at (1) the Ministry of Justice and Human Rights, especially the Directorate General of Immigration; (2) the Police Force of the Republic of Indonesia and the Regional Police of East Java; (3) Bakamla (Indonesian Marine Security Agency).

The data analysis technique used in this research was descriptive analysis where the researcher wanted to give description and circumstance that happened to objects which were investigated objectively. Besides, the data and information that the researcher obtained were studied further following the existing problems and were associated with theory, rules of the prevailing legislation, and the opinions of experts. Then, the researcher drew the conclusion, which was the answer to the problem.

4 Results and discussion

4.1 Criminal act of people smuggling in Indonesia

Unlike the criminal acts of trafficking in persons which are regulated separately in Law No. 21 of 2007 on the Elimination of the Crime of Trafficking in Persons, the criminal act of people smuggling is regulated in the Immigration Act No. 6 of 2011, only in article number 120. In the history of setting up people smuggling in Indonesia, it began with the rise of illegal immigrants from China in the 1950s, the Indonesian Government took legislative steps, regulating it in Government Regulation No. 10 of 1959 or known as *Hoakiao's rules*. Furthermore, in 1992, a new Immigration Law was adopted, namely Law No. 9 of 1992, which in Chapter VIII specifically regulates the immigration crime. If you look at the criminal provisions contained in this immigration law of 1992, it does not explicitly and regulate people smuggling. The law regulates more about foreigners who enter Indonesian territory using documents that are not official or incompatible with the rules of this law. In this case, they are referred to as illegal immigrants. Those who bring in strangers (illegal immigrants) or coordinate them are not discussed in this old immigration law. This is also due to the absence of the definition of people smuggling in the provisions of the law which resulted in perpetrators who smuggled the illegal immigrants cannot be convicted, they only subject to immigration violations. The perpetrators of such crimes cannot be punished under the old immigration laws because Law No. 9 of 1992 does not regulate criminal penalties for people organising transnational crimes. Those who can be convicted under Law Number 9 of 1992 are those who are organised as victims to illegally enter Indonesian territory. There are many criminal acts of people smuggling which is based on Law No. 9 of 1992 that uses Article 54.

In the criminal act of smuggling of migrants provided for in Article 6 of the Protocol against the Smuggling of Migrants, it was stated that States Parties shall make laws and regulations on this type of crime that is intentionally committed and to obtain money or other material benefits. Indonesia is one of the countries that ratified this protocol embodied in Law No. 6 of 2011 on Immigration.

4.2 *Factors of people smuggling*

People smuggling is set in the Migrant Smuggling Protocol of 2004 which provides that:

“Smuggling of migrants shall mean the procurement, to obtain, directly or indirectly, a financial or another material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

It is seen here that the Migrant Smuggling Protocol of 2004 provides a more specific definition of people smuggling, that is, smuggling of migrants. Of the three definitions, it can be described that people smuggling is the business of an individual or an agent in facilitating or assisting foreigners entering the territory of a country that is not their own country.

The various factors that cause migrants to migrate encourage the emergence of people smuggling. These factors are divided into two factors: push factor and pull factor.

- 1 *Push factor*: In the context of people smuggling, the smuggled parties are those who are referred to as illegal immigrants with various statuses. Generally, the motivation that causes them to illegally immigrate is the crucial problem they face in their home country, which can be seen from a political, security, economic, and individual perspective (Khalid and Adnan, 2019). Without these basic problems, it is unlikely that they will engage in risky activities, which require high material and life-threatening costs, ultimately their lives to be bets on the journey, especially on the high seas, both due to natural challenges, as well as hard policies of security apparatus in transit and destination countries. So, however, there is a clear cause for the flow of illegal immigrants from one country to another (Nainggolan, 2009).
- 2 *Pull factor*: This pull factor arises from the countries that become immigrants' destinations, namely: the success of former migrants and the ethnic communities of the origin country who have succeeded in the destination country that attracts the arrival of immigrants to the developed countries, the assurance of asylum, and the expectation of getting a job with a large wage as the countries of the developed countries have good economic stability (Canberra, 2000).

The flood of immigrants with various factors becomes a burden for the destination country. Each country begins to enact legislation and laws that tighten the entry of immigrants into the country. However, it does not diminish the interest of migrants to come, even though illegally, and one of how to reach the country is through people smuggling. With increasingly tight guarding on the borders of destination countries, illegal immigrants need people-smuggling syndicates to enter the country. This creates new crime gaps, people-smuggling syndicates, and imposes high tariffs with the promise of delivering them to the countries aimed by the immigrants.

4.3 Human smuggling in Palermo convention of 2000 and migrants protocol of 2004

Human smuggling is a part of transnational crime that is a problem that is quite influential in the international world. Transnational crimes are now seen as a serious threat to global security. In the multilateral sphere, the concept used is Transnational Organised Crime (UNTOC), which is adapted to international legal instruments agreed in 2000, namely the United Nations Convention on Transnational Organised Crime (UNTOC). Transnational crime has very complex characteristics. Thus, countries need to enhance international cooperation to collectively cope with the increasing threat of transnational crime.

United Nations Convention on Transnational Organised Crime (UNTOC), which Indonesia has ratified by Law No. 5 of 2009 on Ratification of United Nations Convention Against Transnational Organised Crime lists some crimes that fall under the category of transnational organised crime, namely: money laundering, corruption, illicit trade in protected wildlife and plants, crimes against cultural property, human trafficking, smuggling of migrants and the production and trafficking of arms fire. The Convention also recognises the close link between transnational organised crime and terrorism crime, although its characteristics are very different. Although illicit drug trafficking crimes are not referred to in the Convention, these crimes fall into organised transnational crime categories and are even more fully regulated in three drug-related Conventions before the approval of UNTOC.

Palermo Convention of 2000 provides that organised transnational crime constitutes a crime that threatens social, economic, political, security, and world peace. The development and advancement of science and technology, also, to facilitate human traffic from one place to another, from one country to another, also cause negative impacts of growing, increasing, diverse and widespread crime (Law No. 5 of 2009). At this time, the criminal act has evolved into an organised crime which can be seen from the scope, character, modus operandi, and the perpetrator. Effective intergovernmental cooperation and the establishment of a legal framework are crucial in tackling organised transnational crime. As such, Indonesia can more easily gain access and international cooperation in the prevention and eradication of organised transnational crime.

To enhance international cooperation on efforts to prevent and eradicate transnational organised crime, the United Nations has established the United Nations Convention Against Transnational Organised Crime (UNTOC), through United Nations Resolution Number 55/25 as a legal instrument in tackling organised transnational crime.

Indonesia, as a member of the United Nations, participated in the signing of the United Nations Convention Against Transnational Organised Crime (UNTOC), on December 15, 2000 in Palermo, Italy, as a manifestation of its commitment to fight transnational crimes organised through a bilateral, regional, or international framework. Although Indonesia participated in signing the Convention, Indonesia declared the Reservation of Article 35 paragraph (2) which regulates the choice of the state parties in the settlement of disputes in the event of any difference in the interpretation or application of the Convention. The Convention opens the possibility for state parties to make efforts to establish national legislation to criminalise the acts stipulated in Article 2 (b) and Article 15 (2).

Completing the United Nations Convention Against Transnational Organised Crime and Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing

the United Nations Convention against Transnational Organised Crimes as a manifestation of Indonesia's commitment in preventing and fighting organised transnational crimes, including the crime of smuggling of migrants.

Following the provisions of the Protocol, Indonesia declares the Reservation to the provisions of Article 20 paragraph (2) which governs the choice of dispute resolution in case of divergence of interpretation and application of the contents of the Protocol. This requirement is taken in the opinion that in the event of a dispute arising out of differences in interpretation and application of the contents of the protocol not settled through the mechanism as referred to in paragraph (1) of the article, it may appoint the International Court of Justice as a dispute settlement institution based on the agreement of the parties to the dispute. Indonesia also makes Declaration on the provisions of Article 6 paragraph (2) (c), Article 9 paragraph (1) point a, and Article 9 paragraph (2) of the Protocol with the founding that the provisions of those Articles shall be implemented following the principles of Article 6, the principle of territorial sovereignty and integrity.

4.4 Modus operandi of people smuggling in Indonesia

From 2011 to July 2017, POLRI (Indonesian National Police) has conducted legal proceedings against 143 cases of people smuggling and has arrested and detained 169 smugglers consisting of 31 foreigners and 138 Indonesians. In general, people smuggling is done by illegally crossing the borders of the country by unlawful means, either by falsification of documents or anything else. In people smuggling, there are 2 people involved, namely: the first are those who smuggle, hereinafter called as smugglers. The modus operandi in people smuggling is related to demand and supply issues. Concerning requests, those who want to leave their home country with these factors contact the smuggling syndicate in the country. They are willing to pay the smuggler syndicate to smuggle them into the destination countries. This smuggling's modus operandi arises upon the request or desire of the party to be smuggled. Related to bidding, the modus operandi of people smuggling comes from smugglers. Some smugglers have provided the vessel (illegal), but the number of people who want to be dispatched is still small so that the smugglers are looking for people who want to be crossed to the destination countries. Based on IOM, *Op.Cit*, pp.61–68, there are many of the modus operandi performed by Smuggler in this crime, for example, as follows:

Smuggler here is more governed by the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against the Transnational Organised Crime, especially in Article 6 where the point is for migrants who commit human smuggling for profit by committing immigration violation or others that may be subject to legislative or other actions.

Concerning the foreigners caught in Indonesia, it will be handled by the police, in particular, by the Task Force on People Smuggling. The next stages after the arrest are examination and investigation, the police will coordinate with the relevant Embassy of foreigners for a further legal process. There are two possibilities: the foreigner is extradited or tried in the origin country or Indonesia. But the second possibility rarely happens, it happened once in Indonesia, that is in court in Sera.

The second person involved is a person who is smuggled and commonly referred to as a victim. However, the provisions of immigration legislation do not define them as the victims of crime, because indeed in immigration violation/crime, there is no human victim who harmed, the one who suffers from a loss in the state. Therefore, based on

IOM, *Op.Cit*, p.71, the victims of people smuggling will still be called as the smuggled, this is based on several reasons: (1) The smuggled person states his intention to cross illegally to another country, which means there is no element of coercion to smuggle him/herself, (2) The smuggled person knows that the wrongdoing is wrong, but he/she still does it because of the urgency of the situation in his/her country, so that the smuggled person will pay for him/her to be smuggled.

The paradigm shift occurs in the handling of the smuggled person, in particular, the right to be excluded from torture, cruel, inhuman, degrading treatment or punishment (art. 16, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime). In the case of the incarceration of the smuggled person, the participating country shall comply with its obligations contained in the Vienna Convention on Consular Relations, including having to notify the detention of the person to the consular official. Regarding the return of smuggled migrants, the origin country should facilitate and accept the repatriation of persons who become migrants from the smuggling of their citizens and those who have permanent residence rights in their territories upon return. If the migrant does not have a document, then the participating country must issue travel documents or other authority to facilitate people to go and enter their country (Santoso, 2007).

4.5 The handling of people smuggling involving foreigners in the territory of Indonesia

When the smuggled person is handled by the immigration authorities, their appellation will change. First, they will be referred to as Illegal Migrants because they illegally enter the territory of Indonesia. Then, after the data collection of those who do not want to return to the origin country and sorted between smuggler or smuggled, it will be processed by the UNHCR in coordination with the immigration. After that, they get the register as Asylum Seeker and ready to be placed to *Rudenim* (Immigration Detention House). As residents of the Rudenim, they will be referred to as *Detent*. While in Rudenim, they will be given guidance and interviews from UNHCR. When they succeed in this interview, they will get a Refugee Certificate, while those who do not pass them can appeal to UNHCR to get the certificate until it is a final rejection. Those who get refugee status are freer to do anything, but they still stay under surveillance. If they escape to another country, then those who have refugee status (before any third country receives it) will start from scratch to get the refugee status. The next process of those who have the status of refugees will interview with the third country embassy they first addressed. However, if the country refuses, it will be recommended to other countries by UNHCR. Concerning the handling of illegal immigrants to refugees, the Refugee Convention of 1951 is more regulated. However, Indonesia does not ratify this Convention so that the handling is limited to the protection of human rights and facilitators.

For those who subsequently failed to obtain refugee status, immigration action (victims) will be imposed. Immigration action is an administrative action in the field of immigration outside the judicial process in the implementation of immigration measures, to ensure legal certainty and fairness for foreigners affected by immigration actions. Regarding this immigration action, it is regulated in Government Regulation of the Republic of Indonesia No. 31 of 1994 on Foreigners' Monitoring and Immigration

Measures. But for those who are declared as Perpetrators in the crime of people smuggling, they must follow legal procedures that have been regulated in the National Law.

People smuggling has brought serious problems to the government and the nation of Indonesia, although the movement of the crime itself in this country is still new. Indonesia is considered to be the safest transit country to get to the destination country. Java Southern water is one of the transit areas to the destination country of Australia and Christmas Island. This has an impact on the area around the southern waters of Java, especially in East Java. There are many of people smuggling cases that have been handled by immigration agencies in East Java.

Human smuggling and illegal immigrants are related to each other (Hutahayan, 2019). Illegal immigrants successfully entering transit countries and destination countries do not necessarily require cooperation with smuggling agents, they can also smuggle themselves into the destination country without the need of smugglers agents. People smuggling leads to an increasing number of illegal immigrants. The reasons that are often given by smuggled immigrants are to get a job or to improve their economic status, hope for better livelihoods, and a sense of security from the conflict in their country (Chulanova et al., 2019). In the end, the pattern of illegal migration occurring in Indonesia, especially on the Indonesian border islands, leads to the emergence of security problems in the form of transnational crime acts, as well as transnational organised crime.

Indonesia's position in the crime of people smuggling is not only as a transit point but also a country that has ratified the protocol against smuggling of migrants by land, sea, and air in Law No. 15 of 2009. The People Smuggling Protocol preamble affirms that participating countries should declare that effective action to prevent and combat people smuggling by land, sea, or air requires a comprehensive international approach including cooperation, information exchange, and other efforts such as socio-economic efforts at the national, regional, or international level. The Preamble of the Protocol also emphasises the importance of immigrants being treated humanely and the full protection of their rights. The purpose of the protocol is to prevent and fight people smuggling, and to enhance cooperation between countries and to protect the rights of smuggled immigrants, apart from smugglers.

Indonesia as one of the participating countries of this protocol has protected the rights of migrants (Fernandes, 2019). It is proven that there are some handling that cooperates with the International organisation. Given that Indonesia has not ratified the refugee protocol of 1951, Indonesia's responsibility in that regard is limited to humanity or human rights protection, while the principle of refugee protection is carried out by the international organisations and foreign embassies concerned. In carrying out its responsibilities, Indonesia as a transit country has its own rules or provisions in the handling of smuggled foreigners. Therefore, there needs to be coordination with other related agencies. There is a difference in the handling of this people smuggling case. The first when the case of people smuggling is a case of a pure crime involving aspects of asylum seekers and refugees, its handling and coordination will involve shorter coordination nets. At the policy level, the Indonesian Police will play a major role in coordinating with the Coordinating Ministry for Political, Legal and Security Affairs, the Ministry of Foreign Affairs and the Ministry of Justice and Human Rights (Directorate General of Immigration). At the operational level, TNI and/or POLRI (Indonesian National Police), Immigration and Attorney are involved. Secondly, when people

smuggling cases involve aspects of asylum seekers and refugees, coordination becomes more complex. At the policy level, the Coordinating Ministry for Political, Legal and Security Affairs, Ministry of Foreign Affairs, (Directorate General of Multilateral Affairs), and Ministry of Justice and Human Rights (Directorate General of Immigration) will play a leading role. At the operational level, the agencies involved are TNI and/or POLRI (Indonesian National Police), Immigration (with Immigration Detention House), UNHCR and IOM.

IOM in the second handling is specifically a government partner and has a very important role by assisting in ministry for illegal immigrants after they have been caught. The International Organisation seeks to ensure the handling of immigrants in an orderly and humane manner, to promote cooperation on migration issues, to assist in the search for practical solutions to migration problems, and to provide humanitarian assistance to the needy immigrants. Indonesia is working closely with the Indonesian government to develop better coordination in efforts to fight people smuggling and the handling of illegal immigrants. Since July 2000, the Indonesian IOM has succeeded in implementing a Regional Cooperation Agreement, a program created by the governments of Australia and Indonesia and IOM to provide care and maintenance for stranded immigrants. The project assists the Indonesian government by providing volunteer accommodation, food, health care, counselling, and voluntary return options to immigrants caught on their way to Australia. Also, IOM notifies immigrants of their rights to claim asylum and refers to those wishing to register the request with UNHCR.

Another special partner of the Indonesian government is UNHCR where the International Organisation is mandated to provide International protection for asylum seekers and refugees as well as to find sustainable solutions for refugees. Due to the absence of an administrative legal framework and administrative arrangements on International Refugees, and to ensure fair and efficient access to asylum procedures for those arriving in Indonesia, UNHCR enrolls and determines the status of refugees. These processes require close coordination with the Government of Indonesia and IOM.

Based on an interview with Wahyu Tri Wibowo, SH, MH, Head of Sub-Division of Order of Immigration Detention House of Surabaya, the process of obtaining refugee status from the status of asylum seekers here is usually done when illegal immigrants are in *Rudenim* (Immigrant Detention House), where refugees must meet the requirements as determined by UNHCR. Before the interview, UNHCR had provided translators so that the interview process will run well and obtain strong data on the areas that were at the time in a highly armed conflict so that their life and safety were truly threatened. With such data, it can determine which illegal immigrants really should get international protection or not. Those who receive refugee status certificates are certainly illegal immigrants who need international protection.

There are several types of documents issued by UNHCR related to these matters, namely:

- 1 *Appointment slip*: This slip is issued to all asylum seekers requiring them to return to the UNHCR office on a specified date for interviews for filing of enrolment and interviews for determining refugee status. However, if the UNHCR office is close to or within reach of the UNHCR office, UNCHR will visit the *rudenim* for the interview process. This happened in *Rudenim* of Surabaya since 2013 with the office of UNHCR located in Surabaya. Consequently, the possibility of immigrants to escape can be minimised. The person who carries this slip during his stay in the Indonesian territory remains subject to Indonesia's positive law.

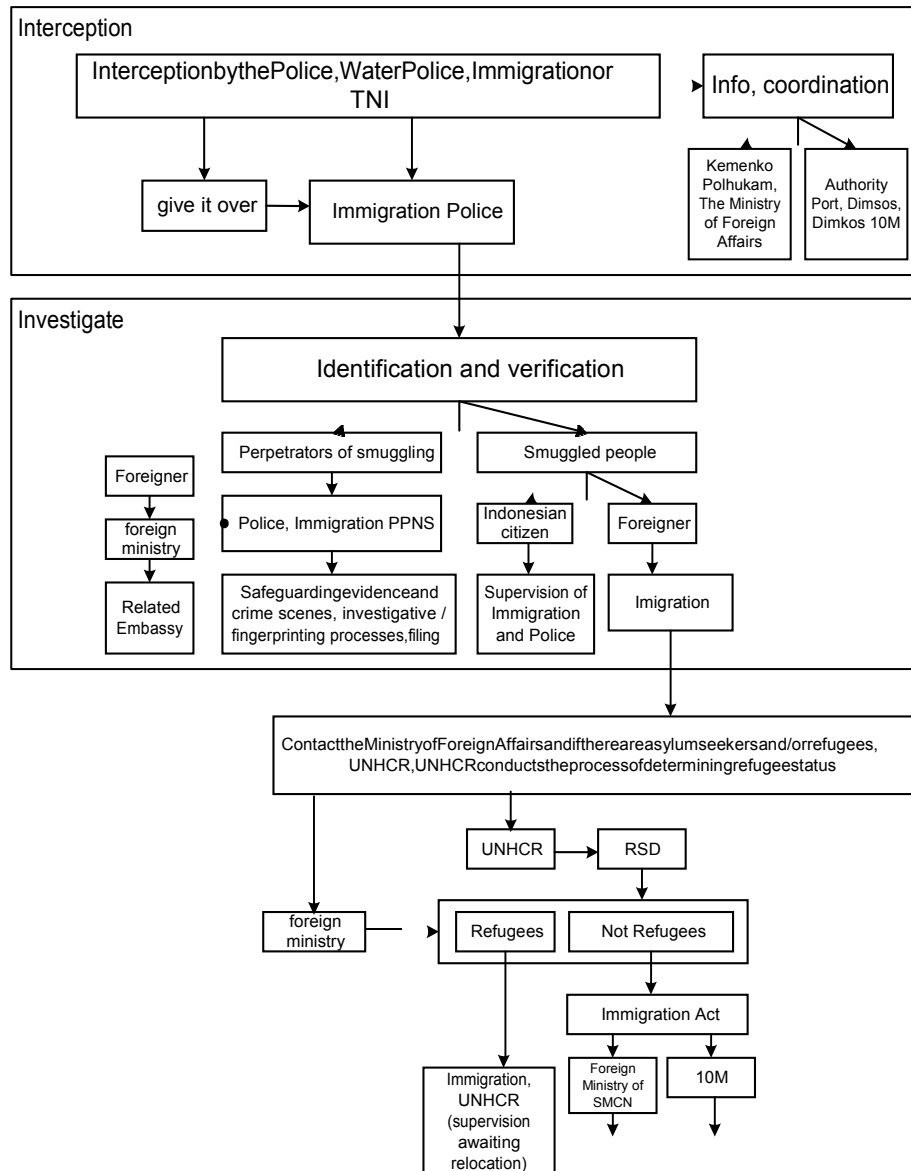
- 2 *Certificate of asylum seeker*: This letter is issued to those who claim that they need international protection and those who register with UNHCR, unless the asylum seeker is on the list while they are in detention. For asylum seekers detained in detention, they will only be given this letter after being expelled from detention or getting recommendations from related parties. Only original documents that are deemed to be valid, the copy is not applicable.
- 3 *Refugee certificate*: The refugee certificate is only issued to refugees after they are recognised by UNHCR. Recognition as a refugee is preceded by a very long interview process (at least 3–4 hours), and if possible, some background testing and testing of the origin country. The validity period of this letter is 12 months from the date of issuance and afterward, the refugees are required to renew the certificate. Only original documents that are deemed to be valid, the copy is not applicable.

The letters are printed on a piece of blue paper, which cannot be faked (accompanied by a special code) and is equipped with a photograph of the person concerned.

In handling illegal immigrants here, the responsibilities undertaken cannot be separated by international coordination and cooperation outside the existence of international organisations. The Ministry of Foreign Affairs as the agency dealing with the problems abroad (as described above) also contributes to the implementation of Indonesia's responsibility for the handling of foreigners involved in people smuggling. The Ministry of Foreign Affairs, in particular, the Regional Directorate, the Directorate of Human Rights and the Directorate of Consular Affairs, receive information from the Indonesian police or immigration authorities that there are foreign nationals caught for an indication of human smuggling, both as perpetrators and smuggled, will send Mandatory Consular Notification (MCN) to the representatives of the relevant foreign countries to inform them officially of the whereabouts of their citizens and the cases they have been subjected to. Specifically, when they claim to be asylum seekers and refugees, this notice must be with the consent of the illegal immigrants concerned, especially if they want voluntary repatriation. Chart of coordination in the handling can be seen below:

From the chart above, it can be explained that some coordination lines conducted by Ministry of Foreign Affairs where for the roman I and II, the flow conducted are the same as Chart 1.6 in the roman II and III, while the flow of roman III, the flow that can be done is after coordinating with the Ministry of Foreign Affairs and UNHCR, then UNHCR through RSD will determine that the foreigners belong to refugees or non-refugees through interviews (both are coordinated with the Ministry of Foreign Affairs). If categorised into refugees, then they will be handled by the Immigration Agency and UNHCR for supervision until the relocation. If they don't belong to refugees, there will be immigration actions (usually repatriation rather than deportation). The first will be handled by the Ministry of Foreign Affairs by sending MCNs to the related embassies for the repatriation process. The second will go through IOM, if there is no embassy/consular representation of foreigners concerned in Indonesia for the return process.

Figure 1 Chart of coordination flow by ministry of foreign affairs I

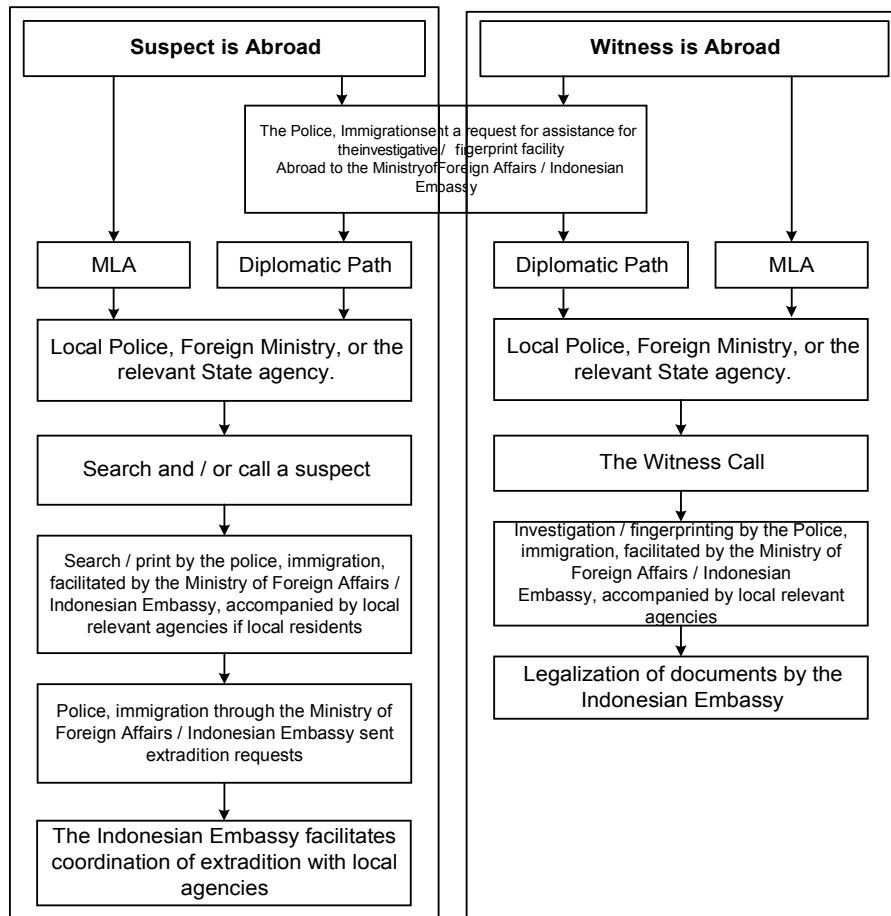


Source: Primary data, processed, 2017

Other things, representatives of the Republic of Indonesia in foreign countries, at the request of relevant agencies in the country, such as the Indonesian Police/Directorate General of Immigration can apply for cooperation in the investigation of people smuggling cases handled to the relevant local agencies through the local foreign ministry, and facilitate the process during the cooperation. Meanwhile, to request someone abroad to become a witness, ask other countries to cooperate during the investigation and examination stage in court until the execution of court decision, the police make requests

for Mutual Legal Assistance (MLA) through the Ministry of Law and Human Rights (Directorate General of General Law Administration). After an explanation from the government of Indonesia, MLA then will be forwarded to the representatives of Republic of Indonesia in the country to be submitted to the local central authority. Coordination flow can be seen in the following chart:

Figure 2 Chart of coordination flow in foreign countries II



Source: Primary data, processed, 2017

The explanation of the chart above is as follows:

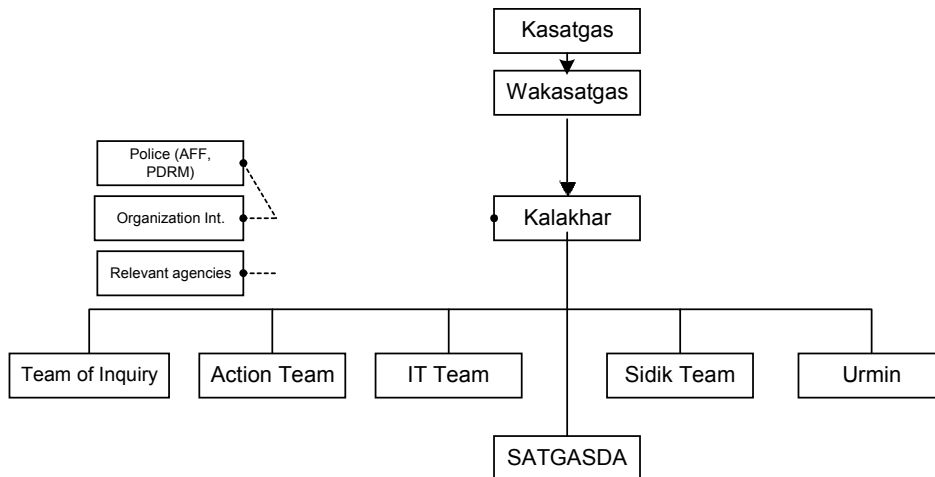
- 1 If the suspect is abroad or in foreign countries, then the police and immigration authorities send requests for assistance to the investigation facility of foreign countries to the Ministry of Foreign Affairs/Embassy of the Republic of Indonesia. After that, it can be reached by MLA or diplomatic path to the police, the Ministry of Foreign Affairs, or related institutions in the country concerned. They will then search and/or summon the suspects. Police and Immigration investigations are facilitated by the Ministry of Foreign Affairs/Embassy of the Republic of Indonesia,

accompanied by the relevant local authorities (if local citizens). Then the police and Immigration agency through the Ministry of Foreign Affairs/Embassy of the Republic of Indonesia sends an extradition request, where then the embassy will facilitate the coordination of extradition with local agencies.

- 2 If the witness required for the investigation/trial is abroad or in foreign countries, the police and immigration send requests for assistance to the investigation facility of foreign countries to the Embassy of the Republic of Indonesia. After that, it can be reached by MLA or diplomatic path to the police, the Ministry of Foreign Affairs, or related institutions in the country concerned. They subsequently called the witnesses. Police and Immigration agency's investigations are facilitated by the Ministry of Foreign Affairs/Embassy of the Republic of Indonesia, accompanied by the relevant local authorities (if local citizens). The final step is the legalisation of documents required by the Embassy of the Republic of Indonesia.

During the handling of foreigners involved in people smuggling, be it the smugglers or smuggled (up to the status of refugees, returning home, and sending to third countries), the agency in charge will coordinate with the relevant embassy/consulates. The handling agency usually gives a copy of their notice about their position until they leave Indonesia. It aims to maintain good relations between Indonesia and the country concerned.

The number of illegal immigrant cases in Indonesia, followed by the crime of Human Smuggling, especially involving foreigners, leading to the formation of People Smuggling Unit in 2009, at the central level, namely Central Task Force of People Smuggling in Criminal Investigation Agency of Indonesian Police and in Regional Police Ranks, which was then called as Regional Task Force of People Smuggling. Task Force of People Smuggling has run for one year and is extended following the decision of the Police Chief. However, since June 2015, Task Force of People Smuggling does not extend its term anymore. The organisational structure of Task Force of People Smuggling can be seen in the chart below:



Next is in the level of Regional Police (*Satgasda/Local Government Agency*), there are 13 Regional Polices, namely:

- 1 Regional Police of Aceh;
- 2 Regional Police of North Sumatra;
- 3 Regional Police of Lampung;
- 4 Regional Police of Banten;
- 5 Regional Police of Metro Jaya;
- 6 Regional Police of West Java;
- 7 Regional Police of East Java;
- 8 Regional Police of Bali;
- 9 Regional Police of NTB;
- 10 Regional Police of NTT;
- 11 Regional Police of North Sulawesi;
- 12 Regional Police of Kepri;
- 13 Regional Police of Banten.

Tasks of the Task Force of People Smuggling:

- a Carrying out investigation tasks and Criminal Investigations related to people smuggling in Indonesia.
- b Cooperating with relevant agencies, national and international institutions in the context of handling of people smuggling in Indonesia.
- c Cooperating with relevant agencies, international police, and other national and international institutions in exchange for information, training, and technical action.

However, since June 2015, the Task Force of People Smuggling has not extended its term. Then, the task of handling People Smuggling is done:

- 1 At Bareskrim (Criminal Investigation Agency) level of Indonesian National Police, handled by Unit III, Sub-Directorate III, Directorate of Public Crime, led by Head of Unit with the title of Police Grand Commissioner Adjutant (AKBP) with 6 members with budget support from DIPA POLRI (Budget Implementation List of Indonesian National Police). For facilities and infrastructure, it no longer uses grant equipment from AFP because the equipment is used by Task Force of TPPO (Human Trafficking Crime).
- 2 At Regional Police level, the case of People Smuggling will be handled by Directorate of Public Criminal Investigation or Directorate of Water Police of Regional Police.

In the event of a People smuggling, POLRI (Indonesian National Police) will act as follows:

- 1 Safekeeping
 - a Safekeeping of People.
 - b Safekeeping of Crime's Goods and Scene.
- 2 First aid
 - c Giving first aid to persons found, especially to sick people, the elderly children or other vulnerable groups.
 - d If there is a dead victim, the officer must keep the position in place, waiting for the special unit that handles it.
 - e If there is a dead victim and it is not possible to remain in his/her position, the victim is moved by giving a mark and performing the necessary documentation.
 - f Providing necessities to people found, such as eating, drinking, shelter, and other things that can be provided at the site of the person's discovery.
- 3 Identification
 - g Origin country.
 - h Complete physical condition of both face, hands, eyes, fingerprints, and special sign.
 - i The completeness of document.
 - j Document authenticity.
 - k Goods found/carried.
 - l The origin of the transportation used.
- 4 Coordination
 - m Coordinating with units that handle People Smuggling, if the officer who find the people is not in charge of or specifically dealing with People Smuggling.
 - n Coordinating with embassies/representatives of countries of origin of immigrants residing in Indonesia.
 - o Coordinating with the Immigration Agency for the handling of victims, as the victim will be handed over to the Immigration Agency.
 - p Coordinating with the local government to provide temporary shelter before any further handling
 - q Coordinating/contacting IOM and UNHCR for the handling of these immigrants.
- 5 Legal action
 - r Investigating alleged criminal offense.
 - s Investigating if any non-criminal element is found in the event.

Figure 3 Map of Indonesia region as the destination of people smuggling

The figure above is the spread of immigrants in Indonesia, the data is data from UNHCR and IOM in Indonesia, does not rule out the possibility that there are still immigrants who are not registered in Indonesia.

In addition to efforts to handle the national people smuggling crime, especially for people smuggling crimes involving foreigners, POLRI has always developed international cooperation, for example, with Australian Federal Police (AFP). As a follow-up to the large number of illegal vessels involved in people smuggling operations in the Asia-Pacific region, in February 2002, a Ministerial Conference in Bali was held to discuss relevant People Smuggling, Trafficking and Related Cross-Country Crimes. The conference was attended by countries that were the origin, transit, and destination countries throughout the Asia Pacific region. The conference resulted in an agreement called BALI PROCES. During the conference, there were 36 members of states, Director General of IOM, UNCHR's Assistant, 15 observers, and 12 regional and international organisations. BALI PROCES was held again in February 2009, which was attended by 46 countries and 5 international institutions. From these activities, POLRI and AFP agreed on cooperation in the handling of Transnational Crime, especially People smuggling.

5 Conclusions

In handling the crime of people smuggling involving foreigners, Indonesia has its own rules or provisions in the handling of smuggled foreigners. Therefore, there needs to be coordination with other related agencies. There is a difference in the handling of this people smuggling case. The first when the case of people smuggling is a case of pure crime involving aspects of asylum seekers and refugees, its handling and coordination will involve shorter coordination nets. At the policy level, the Indonesian Police will play a major role in coordinating with the Coordinating Ministry for Political, Legal and Security Affairs, the Ministry of Foreign Affairs and the Ministry of Justice and Human Rights (Directorate General of Immigration). At the operational level, there is the involvement of POLRI (Indonesian National Police), Immigration, and the Attorney Office.

Some suggestions may be expressed as follows: (1) There are still immigrants who are not registered in Indonesia, there needs to be coordination with other related agencies. It's a must to develop the coordinating method to handling of smuggled foreigners. (2) Indonesia should strive for formal and normative involvement with areas prone to people smuggling to create legal law regarding the handling of people smuggling so that there is cooperation with local agencies in securing or handling illegal immigrants for the sake of welfare and public safety. (3) In long term, aside for strengthening internal efforts in handling people smuggling especially those involving foreign citizens, it is necessary to pioneer international cooperation efforts starting at bilateral, regional, and multi-regional levels in handling this smuggling crime. (4) The government must tighten the border areas so that areas that are not supposed to be the entrance for foreign residents are controlled.

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