

HUMAN SMUGGLING IN IMMIGRATION PERSPECTIVE ASSOCIATED WITH THE THEORY OF STATE SOVEREIGNTY

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Abstract. Human smuggling is one of the transnational crimes that threatens all countries in the world. Indonesia as a maritime country is often used to smuggle people because of its geographical location and the character of its people. This study discusses in detail the people smuggling that occurs in Indonesia which is then analyzed from an immigration perspective and is linked to the theory of state sovereignty. The type of research used is a qualitative normative legal research. The results showed that people smuggling that occurred in Indonesia began with the emergence of the Kunjuangan Visa Free Policy and changes in the requirements of foreign workers. Illegal immigrants in Indonesia are dominated by Chinese citizens. The handling carried out by the Indonesian government is through the judicial process and immigration actions. In the theory of state sovereignty, people smuggling is regulated in Law No. 6 of 2011 concerning Immigration. The embodiment of state sovereignty can also be explained through the theory of selective immigration policy, namely as a fundamental principle that is widely applied to all countries in the world. The problem of state sovereignty as well as the existence of asylum seekers and refugees in Indonesia cannot be separated from the intervention of international institutions that use human rights as a justification.

Keywords: people smuggling; state sovereignty theory; immigration..

I. INTRODUCTION

The intensification of globalization has transformed borders and redefined the movement of people, goods, and ideas across nations. While globalization has brought economic growth, cultural exchange, and technological advancement, it has also expanded the scope of transnational crimes such as human trafficking and smuggling [1]. The increasing ease of international travel, coupled with digital networks, has allowed organized criminal groups to exploit migration pathways and legal loopholes [2]. In response, the United Nations Convention against Transnational Organized Crime (UNTOC), ratified through the Palermo Convention (2000), established international cooperation mechanisms to combat crimes such as trafficking and human smuggling [3]. Despite these global efforts, human smuggling remains a critical challenge in Southeast Asia, particularly in Indonesia, which serves both as a source and transit country [4].

As an archipelagic nation with over 17,000 islands and extensive maritime borders, Indonesia faces distinctive challenges in immigration control. Its geographical openness has made it vulnerable to irregular migration flows, especially through remote sea routes and traditional ports [5]. Human smuggling networks exploit local communities' economic vulnerabilities and limited awareness to facilitate illegal entry and shelter of migrants [6]. Socioeconomic

disparities, unemployment, and limited law enforcement capacity in coastal regions exacerbate the problem, turning Indonesia into a strategic transit point for migrants moving toward Australia and Malaysia [7].

The issue of human smuggling in Indonesia intersects deeply with the theory of state sovereignty, as it challenges the state's capacity to regulate the entry, presence, and departure of foreign nationals. Immigration authorities play a central role as the gatekeepers of sovereignty, responsible for maintaining national security while balancing human rights obligations [8]. Under Law No. 6 of 2011 on Immigration, Indonesia grants immigration officials the authority to impose administrative measures such as deportation, detention, and revocation of stay permits on foreigners who endanger public order or national interests [9]. However, the influx of irregular migrants and asylum seekers—especially those from China, Afghanistan, and the Middle East—poses continuous legal and humanitarian dilemmas [10].

Furthermore, Indonesia has not ratified the 1951 Refugee Convention, which complicates the handling of asylum seekers and refugees residing temporarily in immigration detention centers. This legal vacuum often results in prolonged detention and human rights concerns, drawing criticism from international organizations [11]. Immigration management in this context reflects a dual

function: enforcing state sovereignty and fulfilling humanitarian obligations. In practice, Indonesia relies on cooperation between the Directorate General of Immigration, the National Police (POLRI), and international bodies such as the International Organization for Migration (IOM) to address cases of illegal entry and smuggling [12].

The state sovereignty perspective underscores that immigration policies are not only administrative tools but also symbols of a nation's authority and self-determination. The selective immigration policy principle, as enshrined in Article 75 of Law No. 6/2011, grants states the prerogative to admit only those foreigners who are beneficial, law-abiding, and non-threatening to national order [13]. This aligns with international norms that acknowledge every state's right to control its borders as an expression of sovereignty. Nevertheless, increasing global migration pressures and international human rights advocacy often test this principle in practice, leading to policy tensions between national interests and international cooperation [14].

This study explores human smuggling from an immigration perspective and examines its relationship with the theory of state sovereignty in Indonesia. It seeks to analyze how immigration law functions as a tool to protect national sovereignty amid global migration challenges, and how the concept of selective policy operates in addressing human smuggling. By situating Indonesia's immigration framework within a theoretical and legal context, this research contributes to the broader discourse on the balance between border security, human rights, and international obligations in modern state governance [15].

2.1 Human Smuggling as a Transnational Crime

Human smuggling is defined as the facilitation, transportation, or illegal entry of individuals across international borders for financial or material benefit [16]. It differs from human trafficking in that smuggling typically involves consent between the smuggler and the migrant, even though both acts violate immigration laws [17]. The United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air (2000) classifies human smuggling as a transnational organized crime that undermines state authority and border integrity [18].

Globally, human smuggling has increased in scope and sophistication due to globalization, porous borders, and advancements in communication technology [19]. Studies in Southeast Asia emphasize that Indonesia's strategic geographical position, combined with vast maritime routes and underdeveloped border monitoring infrastructure, makes it a prime transit and destination country for irregular migration [20]. According to recent empirical findings, smuggling networks exploit local socioeconomic vulnerabilities, often recruiting residents of remote coastal villages as intermediaries for sheltering or transporting migrants [21].

2.2 Immigration Law and the Principle of Selective Policy

Immigration law represents an essential instrument through which states exercise their sovereignty and maintain control over the movement of people. In Indonesia, this function is legally embedded in Law No. 6 of 2011 on Immigration, which authorizes immigration officers to conduct preventive and administrative actions such as detention, deportation, and revocation of stay permits for foreign nationals who violate national laws or endanger public order [22]. The selective policy principle—a cornerstone of Indonesian immigration law—ensures that only foreigners beneficial to the state's welfare and security are allowed to enter and reside in its territory.

Comparative studies show that such selective approaches mirror global immigration frameworks that prioritize national security and economic interests while balancing humanitarian considerations [23]. However, scholars have noted that selective enforcement must be aligned with human rights obligations, especially in cases involving asylum seekers and refugees who lack international legal protection in Indonesia [24]. Thus, immigration control becomes not only a technical administrative process but also a manifestation of national ideology and state identity in the international arena.

2.3 The Theory of State Sovereignty in the Context of Immigration

The theory of state sovereignty underpins the state's inherent right to regulate entry, residence, and expulsion of non-citizens as an expression of supreme authority within its territorial boundaries [25]. According to classical theorists such as Jean Bodin and later reaffirmed in modern political science, sovereignty entails both internal supremacy and external independence—granting a nation the power to control immigration policies without external interference. Contemporary scholars argue that globalization and international human rights norms have modified the traditional understanding of sovereignty, introducing a notion of “shared sovereignty” where domestic laws coexist with transnational legal frameworks [23].

In the Indonesian context, immigration is the frontline institution safeguarding state sovereignty. The immigration checkpoint (TPI) functions as a “symbolic boundary” that delineates state jurisdiction and authority. Each immigration action—such as visa issuance, deportation, and inspection—constitutes a concrete expression of sovereignty enforcement. Nonetheless, the increasing presence of irregular migrants and refugees creates a paradox between national sovereignty and international humanitarian commitments, compelling Indonesia to continuously adjust its immigration policies to align with global standards while defending its sovereign interests.

II. RESEARCH METHODS

This study adopts a qualitative normative legal research design to analyze the issue of human smuggling in Indonesia from the perspective of immigration law and state sovereignty theory. Normative legal research emphasizes the examination of written regulations, international conventions, and related legal doctrines to assess how the principles of sovereignty and selective immigration policy are reflected in Indonesia's legal framework [26]. The research focuses on the analysis of relevant primary sources, including Law No. 6 of 2011 on Immigration, Presidential Regulations No. 69/2015, No. 104/2015, and No. 21/2016 regarding visa-free policies, as well as Indonesia's obligations under international instruments such as the UN Protocol against the Smuggling of Migrants (2000). These primary legal materials are complemented by secondary sources—academic journals, government reports, and policy papers—providing theoretical and empirical insights into human smuggling trends, immigration control, and border governance.

The data were collected through documentary and literature review methods, emphasizing the legal construction of sovereignty within immigration enforcement. Analytical techniques applied include descriptive analysis to interpret legal norms and comparative analysis to evaluate the consistency between Indonesia's immigration law and international standards [27]. The research also examines how the enforcement of immigration policies affects Indonesia's ability to assert state sovereignty while addressing humanitarian concerns such as the treatment of asylum seekers and refugees. The combination of legal interpretation and policy analysis allows this study to provide a comprehensive understanding of how Indonesia balances its sovereign rights with global obligations in combating human smuggling.

III. RESULTS AND DISCUSSION

Cases of People Smuggling in Indonesia

People smuggling that occurred in Indonesia began with the emergence of the Kunjuangan Visa Free Policy and changes in the requirements for foreign workers. This policy was initiated with the establishment of Presidential Regulation Number 69 of 2015, then amended by Presidential Regulation Number 104 of 2015, until the last Presidential Regulation Number 21 of 2016 which granted Visa-Free Visits to 169 countries. After the policy was issued, many Chinese citizens began to enter Indonesia. Data from the Central Statistics Agency (BPS) shows that the number of foreign tourist arrivals in Indonesia in February 2016 reached 888.3 thousand visits, an increase of 5.26 percent compared to February 2015. Likewise, compared to January 2016, there was an increase of 9.09 percent. . Cumulatively, from January to February 2016, the number of foreign tourists visiting Indonesia in a broad sense reached 1.70 million visits, an increase of 4.46 percent compared to the number of foreign tourists visiting in the same period the previous year. which amounted to 1.63 million visits. Of this

figure, about thirty percent are dominated by Chinese citizens. In addition, data from the Directorate General of Immigration in 2014 proves that immigration violations in Indonesia are dominated by immigrants from China. The number of violations in 2014 Chinese citizens was 3,816 out of a total of 884,743 and it can be seen that this number dominates when compared to other countries. Other data from the Ministry of Manpower and Transmigration on the Kompas website shows that in 2014. Other data from the Ministry of Manpower and Transmigration shows that in 2014 there were around 68,000 foreign workers working in Indonesia with a Permit to Use Foreign Workers (IMTA). Then, in 2015 the number of foreign workers in Indonesia amounted to 69,000. For the month of June 2016, it has touched the figure of 43,000 people. This number is expected to continue to increase. As of June 2016, there were 14,500 Chinese workers working in Indonesia who obtained a valid work permit. Whereas in 2015 there were 15,000 people and in 2014 there were 16,800 people. Based on these data, the number of Indonesian migrant workers who come to Indonesia has increased. This trend was triggered by the results of the Indonesia-China G2G bilateral cooperation in the economic field. This figure exceeds the number of illegal immigrants (asylum seekers and refugees) throughout Indonesia, which according to data from the Directorate General of Immigration as of September 30, 2015 reached 13,405 people. The difference is quite large considering that the migration of Chinese citizens to Indonesia has increased significantly in less than three years [28].

The Indonesian Government's Handling of People Smuggling Cases

People smuggling or conditions for the entry of illegal immigrants do not always occur in cooperation with smuggling agents, but may occur when illegal immigrants smuggle themselves in. Indonesia is one of the countries that has not ratified the 1951 Convention on the Status of Refugees, so that until now there is no standard for action against refugees. Based on the results of the analysis from various sources, continuing the actions taken by the Immigration Office at the Immigration Office in Indonesia for cases of refugees who are blocked or transiting in the Indonesian legal operating environment to carry out immigration actions based on applicable laws and regulations [29].

Based on Law no. 15 of 2009, Indonesia has ratified the protocol gratification against smuggling, however, a special law on the crime of smuggling people/immigrants in Indonesia has been regulated in Law No. 6 of 2011. However, things that regulate victims of trafficking or people smuggling are still very weak which is contained in Article 86 of Law Number 6 of 2011 concerning immigration as if the refugee is very valuable while Indonesia is not a country that ratifies protocol 51. The Indonesian law itself weakens the Indonesian state even though the phenomenon of the entry of illegal immigrants to Indonesia has met the requirements as people smuggling, but in the absence of a regulation, the Indonesian National Police and immigration only use immigration laws in the investigation process.

In the Regulation of the Director General of Immigration No. IMI1489.UM.08.05 of 2010 concerning the management of illegal immigrants, every refugee who enters Indonesia will be subject to immigration action in the form of detention until his refugee status is determined by the United Nations High Commissioner for Refugees (UNHCR). However, establishing UNHCR status can take a long time. This has an impact on the emergence of human rights violations, because refugees are not criminals but are placed in situations similar to detention. Not surprisingly, many refugees are under psychological pressure and have a strong desire to commit suicide or escape from immigration detention centers. The actions taken by the Indonesian government in overcoming this problem are as follows: (1) The Judicial Process. The judicial process is carried out by immigration officials who are appointed as PPNS under the coordination of POLRI investigators. The authority of these parties is to prohibit foreigners from being in a certain place in Indonesia, or to require foreigners to be in a specified place within the territory of the Republic of Indonesia. In addition, immigration officials have the authority to deport foreigners outside the territory of Indonesia and place foreigners in Immigration quarantine, in the event that they are in Indonesian territory without having a valid immigration permit, waiting for the deportation process, or waiting for the minister's decision/submission of objections filed against them. immigration action imposed on him. (2) Immigration Act. Immigration actions are carried out in accordance with the Directives of the Director General of Public Relations Number F-33.II.01.10 of 1995 concerning Procedures for Supervision of Foreigners. Administrative control is carried out through research on letters or documents, in the form of registration, collection, data processing and presentation, as well as manual and electrical dissemination of information relating to traffic, locations, and activities of foreigners. Immigration administrative actions outside the judicial process, or actions imposed on foreigners who commit immigration violations without having to wait for a court decision. Based on the data obtained, the factors that cause foreigners to illegally enter Indonesian territory (illegal immigrants) are due to the political situation or political stability in their country which is unfavorable and threatens their lives, or interferes with their fulfillment of their needs. quarantine and deportation.

Immigration Links With State Sovereignty

Immigration functions as a guardian of the state, it can be said that because immigration is the first and last institution that screens the arrival and departure of foreigners to and from the territory of the Republic of Indonesia, the implementation of the security function is intended for Indonesian citizens. explained through preventive measures abroad for Indonesian citizens at the request of the Minister of Finance and the Attorney General's Office, these actions are to avoid threats and disturbances that may cause the loss of control of state sovereignty specifically for Indonesians. Citizens (WNI) cannot be prevented solely for immigration reasons [30].

Talking about threats to state sovereignty that come from external factors and about trafficking in persons will

not be separated from the problem of illegal or clandestine immigrants. In addition to human trafficking, there are also transnational crimes which are almost always linked to crimes with a financial purpose, affecting the interests of several countries. These crimes include, among others, organized cross-border crimes, money laundering, financial crimes, intentional environmental destruction and others that can lead to stability. Politics in Indonesia is not balanced and will have many negative impacts on social, cultural and political life, there will be a lot of social inequality due to this transnational crime, so immigration must be really selective in controlling foreigners who want to enter Indonesian territory [31].

In 2010, the fifth UNTOC Conference of States Parties (CoSP) identified several New and Emerging Crimes, including cybercrime, identity-related crimes, illicit trade in cultural heritage objects, environmental crimes, piracy in over the sea, and the illicit trade in organs. New Transnational Crimes have become a concern of the international community given the increasing number and increasingly diverse ways that can threaten national security. The losses incurred from this type of crime are also very large. Immigration also cooperates with other ranks such as the Coordinating Minister for Political, Legal, and Security Affairs, TNI, POLRI and so on to always anticipate anyone who can threaten the security and safety of the state as well as to maintain the upholding of state sovereignty. There are some serious impacts caused by the increasing presence of illegal immigrants in Indonesia. The impact may not be felt now, but in the next few years. The existence of illegal immigrants in Indonesia will have an impact on the philosophy and way of life of the Indonesian state. Differences in national background, language, and culture certainly have the potential to change people's perspectives and lives [32].

People Smuggling in Immigration Perspective Associated With State Sovereignty Theory

Based on Law No. 6 of 2011 in Article 8, it is explained that every individual who wants to enter or leave the territory of the Republic of Indonesia is required to have a travel document, where a travel document is an official document issued by an authorized official containing the identity of the owner. Travel documents can be used to travel between countries, and without these documents no one is allowed to enter the territory of the Republic of Indonesia. The article clearly states that entering Indonesia requires official documents, so that people smuggling cases have violated applicable laws and can be subject to criminal penalties. In addition, Article 75 paragraph (1) also explains that immigration officials have the authority to take administrative action against foreigners who are in the territory of Indonesia who carry out dangerous activities and are reasonably suspected of endangering security and public order or not respecting or not obeying the laws and regulations. invitation. The article explains that immigrants who enter Indonesia can be given administrative action by immigration officials and also explains that immigration officials have an obligation to guard the country's gates from the threat of foreigners who want to enter Indonesian

territory illegally. Administrative actions that can be taken by immigration officials include restrictions, changes, or cancellations of Stay Permits, imposition of fees, and even deportation from Indonesian territory. And these actions can be carried out even if only based on the principle of temporary suspicion against foreigners who are in the territory of Indonesia without having any benefit (principle of benefit) for Indonesia based on the principle of selective policy.

In Syahrin's journal it is stated that there are 203 Immigration Checkpoints (TPI) spread throughout Indonesia (conventional and traditional), consisting of 91 seaports, 33 airports, and 79 cross-border posts. This TPI can be said to be a reflection of the sovereignty of an imaginary country determined by the immigration authorities. In Law No. 6 of 2011 Article 22 Paragraph (2) it is explained that the immigration area is a limited area that can only be passed by passengers or crew of transportation means that will leave or enter Indonesian Territory or authorized officials and officers. This immigration area has a very important position and is able to show the sovereignty of a country. This is because the immigration area already has the boundaries set out in law. The embodiment of state sovereignty can be explained through the theory of selective immigration policy, namely as a fundamental principle that is widely applied to all countries in the world. In Article 75 of Law No. 6 of 2011 it is explained that the selective policy requires: (1) only useful foreigners are allowed to enter and be in Indonesian territory, (2) only foreigners who do not endanger public security and order are allowed to enter and stay in the territory of Indonesia, (3) foreigners must comply with the legal regulations in Indonesia, (4) foreigners who enter and are in the territory of Indonesia must comply with the aims and objectives. The four principles of selective policy indicate that the only parties who can enter and leave the territory of Indonesia are those who can benefit the welfare of the people, nation and state, do not endanger security and order, and are not hostile towards the people [33].

The broad scope of immigration no longer only covers regulation, regulation of entry and exit of people to and from Indonesian territory, as well as supervision of foreigners residing in Indonesian territory, but is also related to preventing people from leaving Indonesian territory. and preventing people from entering the territory of Indonesia for the public interest. Investigating allegations of immigration crimes also has a major impact on political and economic stability as well as state security and defense and has a positive impact on state sovereignty, as well as regulating immigration procedures and the mechanism for granting immigration permits, administering or administering state administration.

The problem of state sovereignty as well as the existence of asylum seekers and refugees in Indonesia cannot be separated from the intervention of international institutions that use human rights as a justification. A well-known principle in refugee law is the principle of prohibiting the expulsion of refugees and asylum seekers to their country of origin (non-refoulement) which is regulated in Article 33 (1) of the 1951 Convention on the Status of Refugees. Given

its function and role, the imaginary boundary has an important meaning as an indicator of state sovereignty, not only as a tail boundary. At this limit, a country's selective policy is also applied to people who will enter it, this is what is known as a manifestation of the exclusive rights of a sovereign state.

IV. CONCLUSION

Ba mugging cases in Indonesia are increasing rapidly due to geographical reasons. Illegal immigrants entering Indonesian territory are dominated by Chinese citizens. Migration of Chinese citizens to Indonesia increased significantly in less than three years (2014-2016). The handling of smuggling cases is regulated by the Indonesian government in the Regulation of the Director General of Immigration No. IMI1489.UM.08.05 of 2010 concerning the Management of Illegal Immigrants. The Indonesian government handles smuggling cases through the judicial process and immigration action. Administrative actions that can be taken by immigration officials include restrictions, changes, or cancellations of Stay Permits, imposition of fees, and even deportation from Indonesian territory. Immigration also cooperates with other ranks such as the Coordinating Minister for Political, Legal, and Security Affairs, TNI, POLRI and so on to always anticipate anyone who can threaten the security and safety of the state as well as to maintain the upholding of state sovereignty. From the perspective of immigration and the theory of state sovereignty, people smuggling is regulated in Law No. 6 of 2011. Immigration areas described in Law no. 6 of 2011 has a very important position and is able to show the sovereignty of a country. This is because the immigration area already has the boundaries set out in law. The embodiment of state sovereignty can also be explained through the theory of selective immigration policy, namely as a fundamental principle that is widely applied to all countries in the world.

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