

# CRIMINAL LIABILITY FOR PEOPLE SMUGGLING IN INDONESIA

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## **ABSTRACT**

*This thesis, titled "Criminal Responsibility for Human Smuggling in Indonesia," addresses two primary research questions. First, the study identifies the causes of human smuggling in Indonesia. Second, it examines the forms of criminal responsibility for human smuggling activities. The research employs a normative approach with an in-depth analysis of relevant laws and regulations, judicial decisions, and pertinent legal literature.*

*The findings reveal that the causes of human smuggling in Indonesia include various factors such as economic issues like poverty and unemployment, social instability, and inadequate border control. Additionally, insufficient policy and law enforcement contribute to the high incidence of human smuggling.*

*Regarding criminal responsibility, the thesis outlines how Indonesian criminal law addresses human smuggling offenses. According to the Criminal Code (KUHP) and the Anti-Trafficking in Persons Law, perpetrators of human smuggling can face imprisonment, fines, and other penalties based on the severity of the crime.*

*Effective law enforcement and international cooperation are crucial aspects of combating human smuggling. This thesis emphasizes the importance of strengthening law enforcement capacities and cross-border coordination to address this issue comprehensively.*

**Keywords:** *human smuggling, criminal responsibility, criminal law, Indonesia, trafficking in persons.*

## **INTRODUCTION**

The Territory of the Republic of Indonesia has the characteristics of being vast and geographically surrounded by waters. Suryo Sakti Hadiwijoyo explained that the country's borders, which are influenced by the characteristics of the territory of countries that have sea borders, will be especially seen in the fields of trade, trade and security and defense. The era of a freer world with increasingly smooth means

of transformation and information has supported the migration process between countries. The shift in national loyalty and population movement between countries due to global economic influences and other backgrounds has caused Indonesia to become a vulnerable area for human smuggling.

The causes and background of human smuggling are inseparable from the conditions, order, and even the value system

that is considered not to allow the development of human potential and hope in their homeland. Various pressures in population problems, the problem of strategic inequality or the unequal distribution of opportunities and socio-economic development, or the occurrence of various conflicts for various reasons, have long been understood as triggers for the occurrence of illegal migration flows.

Facts show that from time to time, illegal methods are actually more of an option in the migration process. A report from the Bureau of Public Affairs, US Department of State in June 2003 explained that every year about 800,000 – 900,000 people have been smuggled in disregard for international borders. Unfortunately, the smuggling has been carried out by organized international crime networks, either through intermediary countries or directly.

Indonesia, with its geographical conditions and community characteristics, is often used as a transit point for human trafficking. This is due to the ease of accessing comfortable hiding places and the provision of transportation facilities, as well as the utilization of the economic conditions of communities around the coast.

Human trafficking in Indonesia has become a significant issue. The Directorate of General Crimes (DIPITUM) of the Criminal Investigation Agency (Bareskrim) has uncovered human trafficking cases that occurred in Makassar, involving foreign nationals, including those from Malaysia and Australia. On January 8, 2017, the police arrested three suspects allegedly involved in trafficking Nepalese nationals in a house in Tamalate, Barombong, Makassar.

The United Nations has established regulations regarding human trafficking in the UN Protocol A/RES/55/25 dated November 15, 2000. By June 2012, 112

countries had signed the protocol and 130 were participants. Article 3 of the UN Protocol 2003 defines human trafficking as the act of obtaining, either directly or indirectly, material or financial benefits from the illegal movement of a person to a part of the country where the person does not have citizenship or residence permission.

Although human trafficking has been an international concern since 2000, Indonesia only regulated it as a criminal offense in 2011 through the enactment of Law No. 6 of 2011 on Immigration. This regulation was based on the consideration that increasing global mobility could create various impacts, both beneficial and harmful to national interests, and required legal certainty in line with the respect, protection, and promotion of human rights.

Additionally, regarding immigration crimes, Indonesia has regulated this in Law (Emergency) No. 8 of 1955 on Immigration Crimes. This law was part of the foreign nationals admission system in Indonesia, which was initially politically selective, meaning it was not easy for foreigners to enter Indonesia, potentially causing various social issues. Besides Law (Emergency) No. 8 of 1955, it was also implicitly regulated under Law No. 9 of 1992 on Immigration.

However, Law No. 9 of 1992 on Immigration was considered inadequate for addressing various challenges related to regulation, service, and oversight in the immigration field. Therefore, this law was repealed and replaced by Law No. 6 of 2011 on Immigration, which is more comprehensive and capable of addressing existing challenges. In positive law, Law No. 6 of 2011 has become the primary reference for human trafficking offenses in Indonesia. However, on the other hand, the government has attempted to address this

issue in Law No. 1 of 2023 concerning the Penal Code, specifically in Article 582. Although there have been adjustments, the formulation does not show significant changes compared to Article 120 of the Immigration Law.

Human trafficking, as a category of international criminal law, requires special attention and more serious handling due to its high-risk implications for the country. This crime has the potential to serve as a gateway for other transnational crimes, such as narcotics, human trafficking, terrorism, and others. Indonesia is still not able to comprehensively address this crime due to various factors. Law No. 6 of 2011 does not fully encompass all elements and components of human trafficking offenses.

Therefore, it can be concluded that the issues related to human trafficking offenses require further analysis. Based on these reasons, the author is interested in discussing “HUMAN TRAFFICKING RESPONSIBILITY IN INDONESIA”.

## **PROBLEM FORMULATION**

- A. What are the causes of people smuggling in Indonesia?
- B. What is the form of criminal liability for people smuggling?

## **METHODS**

### **Research Methods**

This type of research is a normative research that uses a legal approach so that this research examines social phenomena due to existing legislation. The approach method used in the approach uses legislation and regulations. This research is a Statue Approach. This approach is used because in the discussion in this thesis will refer to the Law.

## **Legal Materials**

The legal materials used in writing this thesis can be divided into 2, namely primary legal materials and secondary legal materials. Primary legal material is material that includes laws and regulations related to the problems in this research. While secondary legal materials are materials that clarify primary legal materials such as books, journals, articles, etc.

## **DISCUSSION**

### **A. CAUSES OF PEOPLE SMUGGLING IN INDONESIA**

Human smuggling is a type of criminal activity that is interconnected with other global crimes. Therefore, addressing human smuggling must be viewed in the context of comprehensive crime prevention efforts. According to Article 3(a) of the 2000 UN Protocol against Human Trafficking, human smuggling is defined as “an act aimed at obtaining financial or material gain, either directly or indirectly, by illegally bringing a person into a country where the person is not a national or a permanent resident.”

The term transnational crime is used to identify certain criminal phenomena that cross international borders, exceed the jurisdictional limits of multiple countries, or have impacts on other countries. Transnational crimes, or what is referred to as transnational crime, are highly detrimental to a nation or even a specific region within it. There are many potential deviations, such as the excessive use of resources (both natural and human) that affects people worldwide, leading to the creation or escalation of issues like poverty, conflict, and other material losses. As a result, successful transnational crimes become widespread issues affecting

countries globally; they also attract attention. Transnational crime actors are generally organized groups whose primary aim is to obtain money either legally or illegally by selling any merchandise that can provide maximum profit with minimal risk. Their activities include arms trafficking, drug trafficking, crime, violence, extortion, money laundering, pornography, prostitution, computer crimes, ecological crimes, and others that cross national borders.

Relations or agreements between countries must be established to effectively address crimes that fall outside the scope of national sovereignty. Each Interpol unit in various countries needs to build relationships with Interpol from other countries to facilitate arrests globally and prosecute offenders in order to combat these transnational crimes.

The International Labour Organization (ILO) is the only tripartite UN body that invites three components, namely governments, workers, and employers, to collaboratively develop various policies and programs. The ILO is an international organization established to eliminate all forms of human rights violations and to provide health and safety protection for workers. The ILO is part of a specialized UN agency. The ILO Convention (International Labour Organization) defines migrant workers as individuals who migrate, or have migrated, from one country to another with the expectation that they will work for others besides themselves, including those usually classified as migrants. Migrant worker smuggling in Indonesia is a form of transnational crime that can be categorized as organized. The Department of Social Affairs states that the definition of migrant workers in Indonesia is

someone who moves for work purposes, either legally or illegally, whether locally or internationally. The ILO aims to advance workers' rights at the workplace, support decent work opportunities, enhance social protection, and encourage communication in efforts to address workplace-related issues.

The United Nations General Assembly (UN) initiated the international conference on Transnational Organized Crime in Palermo, Italy, which resulted in the United Nations Convention against Transnational Organized Crime (UNTOC). With the enactment of Law No. 5 of 2009 on the Ratification of the United Nations Convention against Transnational Organized Crime on January 12, 2009, Indonesia adopted the UNTOC convention. The purpose of the UNTOC Convention is to promote cooperation to prevent and effectively combat these crimes, as outlined in Article 1 of UNTOC. The convention and its protocols were approved by over 120 UN member states at the Millennium Assembly in Palermo, Italy, in November 2000. According to Article 38 of the Convention, the Convention became effective 90 days after being ratified by 40 countries. The Convention is accompanied by the following protocols:

Protocol against the Smuggling of Migrants by Land, Air, and Sea;

Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children;

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, and Ammunition.

These conventions and protocols are part of international law that binds governments, not individuals.

The Protocol against the Smuggling of Migrants by Land, Air, and Sea is part of the legislative framework that adopts a comprehensive global strategy to prevent and combat migrant smuggling by land, sea, and air while upholding their fundamental rights. Cooperation, information exchange, and other efforts, including in the socio-economic field, carried out at national, regional, and international levels are key aspects of this protocol. The scope of this protocol includes all preventive, investigative, and prosecutorial measures related to criminal activities covered under Article 6, which are international in scale and involve organized criminal groups, while also protecting the rights of migrants who are targets of these crimes (Article 4). The goal of this protocol, as stated in Article 2, is to prevent and combat migrant smuggling and to encourage cooperation among State Parties to achieve this goal while respecting the rights of smuggled migrants. The ratification and accession process to an agreement is simultaneous; however, accession occurs once other parties sign and ratify the document. The Protocol against the Smuggling of Migrants cannot be "ratified" anymore, but countries can now be "part of it" as the Protocol has already come into effect. Contact details for the authorities are shared among State Parties to facilitate their cooperation.

The distinction between people smuggling and human trafficking is often confusing as both involve serious human rights violations but differ fundamentally in terms of purpose, methods, and legal consequences. A juridical analysis of these terms is crucial for understanding the

different legal approaches applied to each type of crime.

People smuggling is an illegal act involving the transfer of individuals from one country to another in violation of the law, typically for economic purposes. The primary goal of people smuggling is often to gain financial profit from the fees paid by the smuggled persons. Smugglers typically offer their services for high rewards to individuals seeking illegal entry into another country. In this context, people smuggling is usually temporary, and once the individuals reach their destination, the relationship between the smuggler and the individual often ends. People smuggling does not necessarily involve exploitation or coercion but focuses on the illegality of cross-border movement. For example, a migrant who pays a smuggler to help them enter another country without legal documents is considered a victim of people smuggling.

On the other hand, human trafficking refers to the practice of exploiting individuals through coercion, deception, or manipulation for forced labor, slavery, or sexual exploitation. Human trafficking is a more complex and serious crime because it involves elements of coercion or exploitation once the individual reaches their destination. Unlike people smuggling, human trafficking involves ongoing actions where perpetrators treat victims as commodities, often using violence or threats to maintain control over them. The concept of human trafficking includes various forms of exploitation, such as forced labor, prostitution, and domestic servitude. For instance, a migrant worker promised a good job but then forced to work under poor conditions and without payment becomes a victim of human trafficking.

The main difference between the two lies in the elements of coercion and exploitation. In people smuggling, the relationship between the smuggler and the victim generally ends once the individual reaches the destination country. In contrast, human trafficking involves continued exploitation, with the victim often remaining in a state of ongoing abuse. People smuggling focuses on the illegality of crossing borders, while human trafficking emphasizes human rights violations through exploitation and violence against victims after they reach their destination.

From a legal perspective, people smuggling and human trafficking are governed by different regulations and require different law enforcement approaches. The UN Convention on Human Trafficking, known as the Palermo Protocol, defines and provides a legal framework for human trafficking, focusing on victim protection and perpetrator prosecution. This Convention encourages member states to adopt comprehensive laws and policies to combat human trafficking, including regulations prohibiting exploitation and promoting victim protection.

In contrast, addressing people smuggling typically involves border control policies and international cooperation to tackle smuggling networks and improve immigration policies. Law enforcement in people smuggling cases often focuses on preventing illegal movement and dismantling smuggling operations, as well as assisting victims caught in such situations.

Legally, these two crimes require different strategies for prevention and law enforcement. People smuggling is more administrative and operational in nature,

while human trafficking requires a deeper approach in terms of victim protection and prosecution of exploitation perpetrators. It is important to recognize these differences to ensure that policies and laws are effectively implemented to address both types of crimes with the appropriate and sensitive approach to the needs of the victims.

## **B. FORMS OF CRIMINAL LIABILITY FOR PEOPLE SMUGGLING**

In Human smuggling, also known as people smuggling, is a form of crime that is directly or indirectly related to other transnational crimes, such as drug trafficking, trafficking in persons, and terrorism. This characteristic must be watched carefully given the prevalence of drug trafficking cases and the vulnerability of immigrant situations, which may also indicate their involvement in terrorism that threatens national security.

People smuggling and illegal immigration are closely related criminal activities. These crimes can occur if one is realized, meaning that illegal immigrants will succeed if there is collusion from human smugglers, leading to an increase in illegal immigration. It is important to note that illegal immigrants are not perpetrators of people smuggling committed by international organizations, but some immigrants themselves may engage in illegal migration routes. Criminologists also study the deceit faced by immigrants, although this is less frequent compared to migration and behavior. Immigrants are at risk of becoming victims of “regular” street crimes because their living environments are more conducive to criminal activities.

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organizations, although some may themselves engage in illegal migration routes. Criminologists also study the deceit faced by immigrants, though this is less frequent compared to migration and behavior. Immigrants may be at risk of becoming victims of “regular” street crimes due to their living conditions being more conducive to criminal activity.

In legal terms, the definition of a criminal act or suspect is someone who has committed a crime, often referred to as a “criminal.” In criminology studies, positivists believe that many factors influence criminal behavior, and humans are not free from these influences but are affected by various factors when engaging in behavior considered deviant from societal norms. These factors can arise from economic, biological, or psychological issues. Thus, illegal immigrants who are smuggled are initially perpetrators of immigration crimes due to factors influencing them and their desire to be smuggled.

Illegal immigrants are initially considered perpetrators of immigration crimes. According to the Immigration Law, individuals who enter or leave the territory of the Republic of Indonesia without going through immigration checkpoints or authorized immigration officials are subject to Article 113 of Law Number 6 of 2011 on Immigration.

However, due to the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (Protocol relating to the smuggling of migrants by land, sea, and air, supplementing the UN Convention against Transnational Organized Crime), which states in Article 5 that migrants cannot be

held criminally responsible as they are the objects of the crimes established in this protocol ratified by the Indonesian Government through Laws Number 5 of 2009 and Number 15 of 2009, migrants cannot be considered suspects.

Being exempt from being considered a suspect means that while they may indeed be suspects in immigration crimes related to illegal entry into Indonesia and lack of immigration documents, the UN protocol protects them from being considered suspects. This does not mean they are subsequently considered victims of these crimes, as they are clients of the smugglers in these criminal activities.

Human smugglers operate with a specific *modus operandi* involving payments from the smuggling victims, and their operations typically include:

- a. Culpits acting as route planners and managing travel duration, as well as providing facilities for illegal immigrants.
- b. Trip planners who are recognized professionals within the smuggling network.
- c. Land couriers responsible for transporting smuggling victims overland.
- d. Traditional fishermen who serve as field operators working across islands, seas, and countries.
- e. Officials from transit and destination countries who may be weak and susceptible to "collaboration" in corruption and collusion.

In the phenomenon of human smuggling, there are elements of transportation legality, crossing national borders, and generally no exploitation of the immigrants in the destination country.

Conversely, human trafficking always involves exploitation of the immigrants. However, in human trafficking, elements of smuggling may also be present as they involve entering other countries illegally. Human smuggling is an act aimed at obtaining profit, either directly or indirectly, for the smuggler or for others who bring an individual or group, either organized or unorganized, without the legal right to enter or exit Indonesian territory and/or to enter another country where the individual does not have legal entry rights, either using valid or false documents, or without travel documents, either through immigration checks or not.

Unlike the crime of human trafficking regulated in Law Number 21 of 2007, the crime of human smuggling is regulated under the Immigration Law Number 6 of 2011, specifically in Article 120. Human smuggling has been occurring in Indonesia for a long time, dating back to the arrival of Chinese immigrants in the 1950s, and was later regulated by the government through Government Regulation Number 10 of 1959, also known as the Hoakii Regulation. However, the term "human smuggling" was not explicitly defined in earlier laws.

The Immigration Law Number 6 of 2011 only regulates foreign nationals entering and leaving Indonesia with fraudulent documents or without legal immigration status, and imposes penalties such as imprisonment and fines. However, it does not yet include the term "human smuggling" or its international counterpart "people smuggling." Emergency Law Number 8 of 1955 consists of only eight articles, repealing Article 241 sub II and Article 257 *Weirboek van Strafrecht voor Nederlandsch Indie* (KUHP). None of these

eight articles mention the terms "human smuggling," "smuggler," "smuggling," or "smuggled." This emergency law primarily addresses illegal immigration issues and the falsification of travel or citizenship documents. These matters fall under the category of crimes. The regulation concerning document fraud in Emergency Law Number 8 of 1955 is aimed at preventing opportunities for human smuggling crimes involving immigrants entering Indonesia. This focus is directed at the behaviors of smugglers in their operations leading to the intended destination countries.

As previously described, the crime of human smuggling is covered under Article 120 of Law Number 6 of 2011, which states:

“Anyone who commits an act with the aim of obtaining profit, whether directly or indirectly, for themselves or others by smuggling an individual or a group of people, either organized or unorganized, or who instructs others to smuggle an individual or a group of people, either organized or unorganized, without the legal right to enter or leave Indonesian territory and/or to enter another country, where the person does not have legal entry rights, whether using valid or false documents, or without using travel documents, either through immigration checks or not, shall be punished with imprisonment for a minimum of 5 years and a maximum of 15 years, and a fine of at least Rp. 500,000,000 (five hundred million Rupiah) and at most Rp. 1,500,000,000 (one billion five hundred million Rupiah).”

To understand the criminal elements specified, several points must be clarified:

The rule states "Anyone": This means that the crime can be committed by anyone,

including corporations, without exception, regardless of gender, age, occupation, or other factors.

The text mentions “committing acts aimed at obtaining profit, whether directly or indirectly, for oneself or others”: This implies that the act involves seeking profit. The term “aimed at obtaining profit” does not necessarily mean that profit must have been realized. If the act has been carried out with the intention to profit, even if the profit has not yet been obtained, the act can still be considered as committing a crime. Furthermore, the intended profit does not have to be for oneself; it can also be for others or groups. Thus, if the intended profit is gained by others due to the act, it still constitutes human smuggling.

The provision states “to smuggle an individual or a group of people, either organized or unorganized”: This means that the criminal act involves smuggling either a single individual or a group of people, either in an organized manner (i.e., by a group with systematic coordination from departure points to destination) or in an unorganized manner. If the smuggling operation involves transporting individuals or groups with systematic coordination, it qualifies as human smuggling. However, even if the smuggling is done individually without clear coordination, it still constitutes a crime if it involves smuggling individuals or groups.

The clause “or instructs others to smuggle an individual or a group of people, either organized or unorganized”: The use of “or” indicates an alternative. If the initial act of smuggling cannot be proven, but there is evidence of instructing others to smuggle individuals or groups, this also constitutes a crime. This indirectly holds the instigator accountable as well.

The phrase “without the legal right to enter or leave Indonesian territory and/or to enter another country, where the person does not have legal entry rights”: This includes:

- a. Entering Indonesian territory illegally.
- b. Exiting Indonesian territory illegally.
- c. Entering another country illegally.

In summary, human smuggling is defined by the illegal act of transporting individuals or groups across borders, whether organized or unorganized, with the intent of profit, and includes instructing others to engage in such activities, regardless of whether the smuggling involves valid or false documents or occurs through formal immigration checks or not.

Important points to remember are that in the crime of human smuggling, individuals being smuggled cannot be subjected to immigration penalties as outlined in Articles 113, 119, 122, and 123 letter b of Law Number 6 of 2011, as their status is protected under protocols concerning human smuggling through land, sea, or air, as part of the convention against transnational organized crime, ratified by Indonesia in accordance with Law Number 15 of 2009. One of the articles in the protocol states that migrants cannot be held criminally responsible. Therefore, although migrants may technically violate the provisions of Articles 113, 119, 122, and 123 letter b of Law Number 6 of 2011 on Immigration, they cannot be penalized under these articles. Article 113 of Law Number 6 of 2011 on Immigration:

Anyone who deliberately enters or exits Indonesian territory without passing through inspection by Immigration Officials at the Immigration Checkpoint as referred to

in Article 9 paragraph (1) shall be punished with imprisonment for a maximum of 1 (one) year and/or a fine of up to Rp100,000,000.00 (one hundred million Rupiah).

Article 119 of Law Number 6 of 2011 on Immigration:

(1) Any foreigner who enters and/or stays in Indonesian territory without valid and current Travel Documents and Visa as referred to in Article 8 shall be punished with imprisonment for a maximum of 5 (five) years and a fine of up to Rp500,000,000.00 (five hundred million Rupiah).

(2) Any foreigner who deliberately uses Travel Documents that are known or reasonably suspected to be false or forged shall be punished with imprisonment for a maximum of 5 (five) years and a fine of up to Rp500,000,000.00 (five hundred million Rupiah).

Article 122 of Law Number 6 of 2011 on Immigration:

Shall be punished with imprisonment for a maximum of 5 (five) years and a fine of up to Rp500,000,000.00 (five hundred million Rupiah):

a. Any foreigner who deliberately abuses or engages in activities inconsistent with the purpose and intent of the Residence Permit granted to them;

b. Any person who instructs or provides an opportunity for a foreigner to abuse or engage in activities inconsistent with the purpose or intent of the Residence Permit granted to them.

Article 123 letter b of Law Number 6 of 2011 on Immigration:

Any foreigner who deliberately uses a Visa or Residence Permit as referred to in letter a to enter and/or stay in Indonesian territory.

In addition to the explanations above, if a person enters Indonesian territory legally through inspection by authorized officials at the immigration checkpoint but exits Indonesian territory without going through immigration inspection or authorized immigration officials, or vice versa, then the person who brings individuals or groups into or out of Indonesian territory may be subject to the crime of human smuggling.

The UN Convention against Transnational Organized Crime, or the United Nations Convention Against Transnational Organized Crime, addresses human smuggling as an organized crime. On December 12, 2000, Indonesia ratified the results of this convention and signed its protocols. Aiming to enhance international cooperation and to prevent and combat transnational organized crime, the UN Convention against Transnational Organized Crime was finally adopted through Law Number 5 of 2009. With the enactment of Law Number 6 of 2011 and Law Number 5 of 2009, it is hoped that Indonesia will be able to enforce the law against human traffickers who threaten the social life of its citizens and provide legal authority to relevant parties to impose sanctions or penalties on them.

Violators of the law who infringe upon legal provisions may be subject to sanctions or penalties, including administrative, civil, and criminal penalties. From the penal system intended to establish a sanction, it is clear what sanctions or penalties are given to those who commit legal violations. To enforce norms, the presence of a penal system will provide guidance and

considerations regarding what should be the sanctions in a criminal act. However, due to the involvement of many parties and other institutions, the judicial system's procedural penalties are the most challenging. Settlement of disputes through the 2000 Protocol Against the Smuggling of Migrants by Land, Air, and Sea, which supplements the UN Convention against Transnational Organized Crime, governs the resolution of disputes that may arise between parties in Article 20 (1): States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

States Parties are required to use negotiation forums to resolve disagreements on how the protocol should be interpreted and applied. If this negotiation fails, one party may request that the dispute be settled. One party may bring this dispute to the International Court of Justice (ICJ) in accordance with the ICJ statute if arbitration cannot be resolved within six months. However, a State Party may, and this applies reciprocally to other State Parties that are partners, issue a statement declaring that the State is not willing to fulfill that obligation. The State Party may withdraw this reservation at any time if desired.

Meanwhile, the resolution of disputes through the Palermo Convention/United Nations Convention against Transnational Organized Crime (UNTOC): This protocol governs the resolution of disputes that may arise between parties found in Article 35. Settlement of disputes: 1) States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation; 2) Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot

be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court; 3) Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation; 4) Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Sanctions under the provisions are only aimed at human traffickers, under Article 120 of the Republic of Indonesia Law Number 6 of 2011 on Immigration: 1) Any person who commits an act aimed at seeking profit, either directly or indirectly, for themselves or for others by bringing someone or a group of people, whether organized or not, or instructing others to bring someone or a group of people, whether organized or not, who do not have the legal right to enter or exit Indonesia and/or enter another country, whether using valid documents or false documents, or without using travel documents, whether through immigration checks or not, shall be penalized for Human Smuggling with imprisonment of not less than 5 (five) years and not more than 15 (fifteen) years and a fine of not less than Rp500,000,000.00 (five

hundred million rupiah) and not more than Rp1,500,000,000.00 (one billion five hundred million rupiah); 2) Attempts to commit the criminal act of Human Smuggling shall be penalized with the same penalty as stipulated in paragraph (1). The case of Maung Maung Tin alias Anwar Sadiiq alias Sadiiq, who was caught smuggling many people to Christmas Island, Australia, serves as an example. He used the motor boat (KM) Farah to carry out his actions. Anwar Sadiiq, a Myanmar citizen using the alias Maung Maung Tin, was caught red-handed smuggling people, thanks to the efforts of the Directorate of General Crime Investigation (Dittipidum) Bareksrim Polri. The police arrested Anwar Sadiiq at Permata Surya Kalideres Apartment, West Jakarta. He is suspected of smuggling individuals in Nusa Tenggara Timur. The traffickers who committed this violation started doing so in November 2015, but the police only became aware of it in August 2017.

The accountability of human traffickers crossing national borders encompasses both international and national legal aspects related to the illegal act of transporting individuals across borders without proper authorization or documents. In this context, accountability includes several important dimensions: criminal law aspects, law enforcement procedures, and judicial mechanisms. Human traffickers crossing national borders can face criminal sanctions based on the laws in the country where they operate, as well as international legal provisions. In the Indonesian criminal justice system, some important aspects include:

a. National Law: In Indonesia, the crime of human trafficking is regulated under Law Number 6 of 2011 concerning

Immigration. The articles in this law address human trafficking as a criminal act and stipulate the types of penalties for perpetrators, including imprisonment and fines.

b. International Criminal Law: In the international context, human trafficking can be regulated by international conventions, such as the Palermo Protocol on the Smuggling of Migrants attached to the UN Convention against Transnational Organized Crime. State parties are obligated to adopt and implement national laws in line with the convention.

Law enforcement against human traffickers crossing national borders involves several steps as follows:

a. Investigation: Law enforcement agencies conduct investigations to gather evidence and information about trafficking networks. This includes apprehending perpetrators, seizing evidence, and identifying trafficking routes and methods.

b. International Cooperation: Given that human trafficking involves multiple countries, international cooperation is crucial. Countries can share information, conduct joint operations, and provide mutual legal assistance to address trafficking cases.

c. Prosecution: The Public Prosecutor (JPU) prepares charges and prosecutes offenders based on evidence obtained during the investigation. Prosecution is conducted in accordance with applicable criminal law provisions.

Accountability for human traffickers crossing national borders involves applying national and international criminal law, effective law enforcement procedures, and fair judicial mechanisms. This process aims

to uphold justice, reduce trafficking crimes, and protect victims' rights. Through a comprehensive approach, it is hoped that the issue of human trafficking can be addressed more effectively.

## **CONCLUSION**

Based on the results of the research as described in the previous chapters, the following conclusions can be drawn:

- a. The reasons for human smuggling (people smuggling) in Indonesia include the country's abundant labor resources and its position as an international market. In other words, Indonesia serves as a key destination for migrants. Additionally, the very relaxed and friendly attitude of Indonesians towards newcomers makes migrants feel comfortable staying in Indonesia, especially those coming from conflict-affected countries. Indonesia becomes a target for human smuggling, both as a destination and a transit point. Geographically, Indonesia is an archipelago nation, which facilitates smuggling through land, sea, and air routes. The country also has a long coastline that serves as a trade route and can facilitate transnational crime. Another factor is Indonesia's weakness in law enforcement (legally) and its diplomatic weaknesses.
- b. The Criminal responsibility for human smuggling involves the application of sanctions in accordance with Law Number 6 of 2011 on Immigration, including imprisonment and fines. The judicial process must be fair and transparent, ensuring that the rights of the accused are protected. Additionally, international cooperation is crucial for handling cross-border cases and harmonizing laws between countries.

These efforts aim to reduce the prevalence of human smuggling, protect the rights of victims, and effectively strengthen the global legal system.

## **SUGGESTION**

Based on the results of the research as described in the previous chapters, the suggestions put forward by the author are:

- a. To the government, there is a need for increased attention to human trafficking crimes, as human trafficking is a transnational crime that has severe impacts on citizens. Especially for officials within the criminal justice system, it is crucial that this crime be addressed seriously, as Indonesia is a target for human trafficking. The police must be proactive in responding to human trafficking incidents, and judges must consider the public interest when imposing sanctions on human traffickers.
- b. To students and the public, it is important to be more cautious when interacting with foreign nationals, even though Indonesian citizens are generally welcoming to foreigners. Intense interactions with illegal immigrants who have been trafficked can have negative impacts at the grassroots level. When providing assistance, caution should be exercised if any of the individuals are illegal immigrants involved in trafficking, as this could result in criminal sanctions.

## **READING LIST**

### **Laws and Regulations**

Law Number 6 of 2011 on Immigration

Law Number 1 of 1946 on Criminal Law Regulations

Law Number 8 of 1981 on Criminal Procedure Code

### **Book**

Adami Chazawi, 2005, Pelajaran Hukum Pidana 2, Jakarta : PT Raja Grafindo Persada

Adami Chazawi, 2007, Kemahiran dan Ketrampilan Praktek Hukum Pidana, Bayumedia Publishing, Malang

Akbar, Anugerah Rizki, Tindak Pidana Penyelundupan Manusia Dalam Rancangan Kitab Undang-Undang Hukum Pidana, (Jakarta : Aliansi Nasional Reformasi KUHP, 2016).

Andi Hamzah, Pengantar Hukum Acara Pidana Indonesia, Jakarta: Sinar Grafika, 2011.

Andi, Hamzah, 1983, Pengantar Hukum Acara Pidana Indonesia, Penerbit Ghalia Indonesia, Jakarta

Anthon F Susanto, 2004, Wajah Peradilan Kita, Konstruksi Sosial Tentang Penyimpangan, Mekanisme Kontrol dan Akuntabilitas Peradilan Pidana, Bandung: PT. Refika Aditama

Arief, Barda Nawawi, 1943-. (2010.). Bunga rampai hukum pidana. : Perkembangan penyusunan konsep KUHP baru / oleh Barda Nawawi Arief. Kencana Prenada Media Group, Jakarta

Asri, Syamsul, Achmad, Analisis Pola Jaringan dan Modus Operandi People Smuggling di Provinsi Sulawesi Selatan (Studi Kasus Kota Makasar dan Kabupaten Bulukumba), dalam Jurnal Fakultas Ekonomi dan Ilmu Sosial UNIFA Makasar

Bambang Poemomo, 2006, Penerapan Hukum Oleh Hakim, Yogyakarta: A Martha Buku

Bambang Waluyo, 2004, Pidana dan Pemidanaan, Sinar grafika, Jakarta

Barda Nawawi Arief 2001. Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan, Citra Aditya Bakti, Bandung.

Barda Nawawi Arief, 2009 Perkembangan Sistem Pemidanaan di Indonesia, (Semarang : Badan Penerbit Universitas Diponegoro,)

Christianti, Diajeng Wulan, Analisa Kejahatan Penyelundupan Manusia Berdasarkan Smuggling Of Migrant Protocol Ditinjau Dari Perspektf Perlindungan Pencari Suaka : Studi Kasus Pengungsi Rohingnya, dalam Padjajaran Jurnal Ilmu Hukum, Vol. 3 No. 3 (2016).

Ilyas, Amir, Asas-Asas Hukum Pidana (Memahami Tindak Pidana dan Petanggungjawaban Pidana Sebagai Syarat Pemidanaan), (Yogya, Mahakarya Rangkang Offset, 2012).

Julianty, Evlyn Martha Pranomo, Dahlan Ali, Mujibussalim, Kebijakan Kriminal Dalam Penanggulangan Penyelundupan Manusia di Indonesia, dalam Jurnal Ilmu Hukum Pascasarjana Universitas Syiah Kuala, Vol. 2 No. 2 (2014).

Martha, I Dewa Agung Gede Mahardhika, "Pertanggungjawaban Pidana terhadap Pelaku Tindak Pidana Penyelundupan Manusia", dalam Jurnal Magister Hukum Udayana, Vol. 5, No. 1 (Mei, 2016).

Nieuwenhuys, Celine, Antoine Pecoud, Human Trafficking, Information

Campaigns, and Strategies of Migration Control, (Sage, American Behavioral Scientist, 2007).

Pranomo, Pandu, Tindak Pidana Penyelundupan Manusia Berdasarkan Undangundang Nomor 6 Tahun 2011 Tentang Keimigrasian (Analisis Putusan Pengadilan Negeri Wonosari Nomor : 135/Pid.Sus/2014/PN.Wn), Penelitian ini adalah skripsi oleh mahasiswa Jurusan Ilmu Hukum Fakultas Hukum Pada Universitas Sebelas Maret Surakarta, Tahun 2015.

Ramadhani, Gita Santika, dkk, Sistem Pidana dan Tindakan “Double Track System” dalam Hukum Pidana di Indonesia” dalam jurnal Diponegoro Law Review, Vol. 1, No. 4. (2012)

Sari, Opra Floria, Tanggung Jawab Indonesia Sebagai Negara Transit Bagi Warga Negara Asing (WNA) yang Terlibat Dalam Penyelundupan Manusia, dalam Artikel Ilmiah Fakultas Hukum Universitas Brawijaya (2014).