

## Indonesia's Legal Policy on Illegal Immigrant Smuggling by Sea

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**Abstract:** *the purpose of this research is to know and analyze Indonesia's legal policy on smuggling illegal immigrants via sea routes. In this writing, the author uses a normative legal method with a descriptive analysis research specification. Indonesia is a large country with a strategic position right at the crossroads of world traffic, now facing a major problem related to human smuggling. The traffic of goods, services, and also humans which is very busy in this country with thousands of islands, now appears like a double-edged sword for the Republic of Indonesia. Indonesia has waters that are one of the arteries of international trade. This position places Indonesia on land and sea borders directly with ten neighboring countries in Southeast Asia. Thus, Indonesia is one of the countries that must deal with the problem of foreigners seeking asylum and refugees who enter and live in Indonesian territory. Article 120 of the Immigration Law regulates the crime of human smuggling with "the threat of imprisonment for a minimum of five years and a maximum of 15 years and a fine of at least IDR 500 million and a maximum of IDR 1.5 billion".*

**Keywords:** Immigration; Human; Trafficking.

### 1. Introduction

The Republic of Indonesia is a country based on law, this is emphasized in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "The Republic of Indonesia is a country based on law", as a country based on law, it highly upholds the applicable law as a tool to regulate national and state life.<sup>1</sup> Thus, law enforcement occupies a very central position, by placing the law in its function as a regulatory tool for the lives of society with society and society with the government.<sup>2</sup>

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<sup>1</sup>Adhe Ismail Ananda, (2021), Constitutionalism Concept in Implementation of Indonesian State Administration, Journal of Sovereign Law, 4 (2), p 124

<sup>2</sup>Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto, (2018), The Role of the Judicial Commission on Supervision of Judge's Crime in Indonesia, Jurnal Daulat Hukum, 1 (4), p 895

Indonesia as the largest archipelagic state in the world<sup>3</sup>, has a sea area of approximately 5.8 million square kilometers consisting of 3.1 million kilometers in the form of territorial waters and 2.7 million kilometers in the form of ZEEI seas. The sea area stretches from 94° to 141° East Longitude and between 6° North Latitude and 11° South Latitude. The archipelago of the archipelago has more than 17,506 islands and 92 islands, some of which are located in border areas with several neighboring countries. From the vast area and the potential contained therein, of course this strategic condition needs serious attention from all components of the nation in managing and utilizing it for the prosperity and welfare of the entire community.

Besides Indonesia as an archipelagic state, the Unitary State of the Republic of Indonesia is also one of the big countries that highly prioritizes the applicable legal provisions. The positive legal rules that apply in Indonesia are clearly an important component in building a safe, peaceful and peaceful life.<sup>4</sup>

Indonesia is a large country with a strategic position right at the crossroads of world traffic, now facing a major problem related to human smuggling. The traffic of goods, services, and also people which is very busy in this country with thousands of islands, now appears like a double-edged sword for the Republic of Indonesia. Indonesia has waters which are one of the arteries of international trade. This position places Indonesia on land and sea borders directly with ten neighboring countries in Southeast Asia. Thus, Indonesia is one of the countries that must deal with the problem of foreign asylum seekers and refugees who enter and live in Indonesian territory.

In this case, many countries in the world generally agree that migration that is not in accordance with immigration regulations or illegal migration will result in threats to sovereignty, security, social and economic life, and even threats to the ideology of a nation. Not to mention that illegal migration can be stopped, a new variant has emerged that is now increasingly prominent, namely people smuggling.<sup>5</sup>

Law Number 6 of 1996 concerning Indonesian Waters, Law Number 6 of 2011 concerning Immigration, Government Regulation Number 36 of 2002 concerning the Rights and Obligations of Foreign Ships in Carrying Out Peaceful Passage through Indonesian Waters, and Government Regulation Number 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Exercising the Right to Cross Archipelagic Sea Lanes Through the Stipulated Archipelagic Sea

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<sup>3</sup>Jeffrey Rewis, (2004), *Sewing the Torn Sea: The Paradigm of the Indonesian Archipelago State*, Malesung Foundation, Jakarta, p. Xii.

<sup>4</sup>Sumaryono and Sri Kusriyah, (2020), *The Criminal Enforcement of the Fraud Mode of Multiple Money (Casestudy Decision No.61 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum, 3 (1), p 237

<sup>5</sup> Mochtar Kusumaatmadja, (1976), *Introduction to International Law*, Jakarta: Bina Cipta, p. 4

Lanes are regulations used in preventing and taking action against the crime of smuggling illegal immigrants by sea in Indonesian waters.

Human smuggling and illegal immigration are interrelated. Illegal immigrants who successfully enter transit countries or destination countries do not always need cooperation with smuggling agents, they can also smuggle themselves into the destination country without needing smuggling agents. Human smuggling results in an increasing number of illegal immigrants.<sup>6</sup>The reasons often given by smuggled immigrants are to get work or improve their economic status, the hope of getting a better life, and a sense of security from conflict in their country.<sup>7</sup>

Researchers determine a theme and form a title to be continued in conducting a scientific study in the form of systematic and basic research. The purpose of the research is review and analyze the legal policies of smuggling illegal immigrants through sea routes implemented by Indonesia.

## **2. Research Methods**

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

## **3. Results and Discussion**

### **3.1. Illegal Immigrants**

The issue of illegal immigrants in Indonesia is not an easy matter. The movement of people between countries is basically a traditional activity, where people move from one country to another to seek a better life in the destination country. However, the presence of nation states that have sovereignty over a region has caused this traditional migration flow to be slightly hampered.

The state requires immigration to use a legal pattern. Unfortunately, legally immigrating is not easy. The obstacles faced by immigrants such as economic limitations, inability to meet the requirements for legal immigration or taking care of valid travel documents, and the unwillingness of the destination country to accept immigrant applications to be accepted as official immigrants, encourage the involvement of transnational crime groups that seek to develop illegal immigration patterns.

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<sup>6</sup>Kadarudin, (2013), People Smuggling in the Perspective of International Law and Law Enforcement in Indonesia, *Journal of Library, Information and Computers "Jupiter"*. XII (2), p 69-70

<sup>7</sup>Sam Fernando, (2013), Government Legal Policy (Directorate General of Immigration) in Addressing the Problem of Human Smuggling, *Postgraduate Journal of Brawijaya University*, p. 4.

According to (The American Heritage) the definition of an immigrant is someone who leaves a country to reside permanently or settle in another country "A person who leaves one country to settle permanently in another". Meanwhile, according to the Oxford Dictionary of Law, an immigrant is defined as, "... is the act of entering a country other than one's native country with the intention of living there permanently".

This definition means that the immigration event carried out by immigrants is seen from the purpose or efforts of the migration actors to settle in the destination country. In general, based on the definitions above, it shows that immigrants are individuals or groups of individuals who move from their country (region) to another country (region) with a specific purpose that encourages individuals to migrate to settle in the destination area. These immigrants are grouped into two, namely legal immigrants and illegal immigrants.

According to Hanson, illegal immigration is defined as an attempt by an individual or group of individuals to enter an area without permission.<sup>8</sup>Illegal immigrants or illegal immigrants can also be interpreted as an attempt by an individual or group of individuals to settle in an area but exceed the validity period of a valid residence permit or violate the requirements for entering an area legally.

In the past, the term immigrant was not limited to humans as the perpetrators, but could also be used for animals and objects that were moved across a country's borders. Initially, this population movement occurred due to war and natural disasters, so that residents sought other safer areas. Then the term immigrant was narrowed down to humans only, after countries experienced developments that automatically also created laws and regulations. A person who comes from one country to another but does not settle is not called an immigrant, but only a tourist or traveler.

The number of immigrants, most of whom can be said to be illegal, has the potential to cause unrest and disrupt the stability of ideology, politics, economy, socio-culture, and defense and security, and is a weakness of the Indonesian nation. If they are unable to handle, prevent, and resolve the problem of illegal immigrants, this will weaken National Resilience.

### **3.2. Legal Policy on Smuggling Illegal Immigrants Through Sea Routes Implemented by Indonesia**

The biggest driving factor for migration events carried out by illegal immigrants to Indonesia is due to conflicts and wars that occur in their countries. The impact of these conflicts and wars causes these immigrants to lose their homes and jobs, as well as fear of discrimination and persecution in their own countries.

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<sup>8</sup>Ahmad Romsan, et al., (2013), Introduction to International Refugee Law: International Law and Principles of International Protection, Bandung: Sanic Offset Printing, p 3

Economic factors are the main factors that drive the migration process, because migration for economic reasons provides opportunities for migrants to obtain better income, jobs and other reasons.

Economic factors are also one of the driving factors for the migration of illegal immigrants entering Indonesia. The unstable economic conditions of the country or the economic crisis that is currently experiencing, resulting in limited employment opportunities. The unstable economic conditions of the country then encourage residents in the country to migrate by becoming illegal immigrants.<sup>9</sup>

And the existence of the Indonesian government's policy of implementing Domestic Investment (PMDN) and Foreign Investment (PMA) policies to support the government in national development efforts, has become one of the factors that encourage the entry of illegal immigrants into Indonesia. Unlike the past conditions during World War II, now immigrants are dominated by Middle Eastern countries such as Afghanistan, Iraq, Sri Lanka, Myanmar, and several other countries.

The number of illegal immigrants in Indonesia has continued to experience an increasing trend since 2008. The Director General of Immigration at the Ministry of Law and Human Rights, Muhammad Indra, revealed that the number of illegal immigrants entering Indonesia since 2008 has increased significantly compared to the previous year. If it is totaled in the period of May-December 2008, the number of illegal immigrants entering Indonesia reached around 100 people and then in the period of January-April 2009, the number became 600 people.<sup>10</sup>

National defense is part of a country's government function that aims to achieve national goals. Threats that emerge on the country's borders show that there are threats that can disrupt the country's sovereignty. Human smuggling is a threat that is now emerging on the country's borders by making Indonesia a transit country.<sup>11</sup>

According to Law No. 6 of 2011 concerning Immigration, refugees and asylum seekers are still categorized as illegal immigrants or immigrants who enter Indonesian territory without official documents or without going through the procedures determined by law. Therefore, refugees and asylum seekers are always subject to action in the form of detention for an indefinite period of time in Immigration Detention Centers (RUDENIM) spread across several locations in

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<sup>9</sup>Moh Arif, (2017), *Immigration: An Introduction*. Center for Education and Training of Ministry of Justice Employees. Jakarta: Ministry of Justice of the Republic of Indonesia, p 11

<sup>10</sup>Atik Krustiyati, (2012), *Refugee Handling Policy in Indonesia*, Study of the 1951 Refugee Convention, Surabaya: UBAYA, p 52

<sup>11</sup>Suryani, Suhirwan, Rudy AG Gultom, (2018), *Dumai Navy Base Strategy in Dealing with Human Smuggling on the Dumai Sea Border and the Malacca Strait*, *Journal of Asymmetric Warfare*, 4 (3), p 61-75.

Indonesia. Conditions like this are clearly concerning, because they generally never intend to enter a country without official documents because it is basically difficult for refugees to obtain official immigration documents.

Article 120 of the Immigration Law regulates the crime of human smuggling with "a minimum prison sentence of five years and a maximum of 15 years and a fine of at least IDR 500 million and a maximum of IDR 1.5 billion". The same criminal threat also applies to attempts to commit the crime of human smuggling. The rules regarding the procedures for people entering and leaving Indonesia are regulated in Law 6/2011. In the provisions of Article 8 paragraph (1) of Law 6/2011, which states: "Every person who enters or leaves the territory of Indonesia is required to have valid and valid travel documents".

It is stipulated that every person entering or leaving the territory of Indonesia must have valid and valid travel documents. So in this case, according to the information you provided above, the foreign national ("WNA") that you refer to as a "refugee" or refugee is a WNA who does not have valid travel documents, thus violating the provisions as stipulated in Law 6/2011.

Further provisions regarding "refugees" or refugees from other countries who enter Indonesia not in accordance with the provisions of Law 6/2011 can be seen in the provisions of the Regulation of the Director General of Immigration Number IMI-1489.UM.08.05 of 2010 concerning Handling of Illegal Immigrants ("Regulation of the Director General of Immigration concerning Handling of Illegal Immigrants"). In this regulation, refugees or refugees are referred to as illegal immigrants. Article 1 number 1 of the Regulation of the Director General of Immigration concerning Handling of Illegal Immigrants states:

"In this regulation of the director general, what is meant by: illegal immigrants are foreigners who enter and/or are in Indonesian territory not in accordance with the provisions of laws and regulations."

It is stipulated that what is meant by an illegal immigrant is "a foreign national who enters or is in Indonesia illegally, so that this person should be subject to immigration action as referred to in the provisions of Article 2 paragraph (1) of the Regulation of the Director General of Immigration concerning Handling of Illegal Immigrants", which states:

"Illegal immigrants who are found to be in Indonesia will be subject to immigration action."

Namely, in the form of deportation (Article 75 paragraph (2) letter f Law 6/2011) or placement in a temporary shelter (Immigration Detention Room) as regulated in the provisions of Article 83 paragraph (1) letter b and letter d Law 6/2011, which states that Immigration Officers have the authority to place foreigners in Immigration Detention Houses or Immigration Detention Rooms if the foreigner

is in Indonesian territory without valid travel documents or is awaiting deportation.<sup>12</sup>

Based on Article 75, it states that "every immigration official can take administrative action in the form of inclusion in the list of prevention or deterrence, restriction, change, or cancellation of Stay Permit, imposition of burden fees, even deportation from the territory of Indonesia (vide Article 75 paragraph 2 of Law No. 6 of 2011)". Immigration officials who take administrative action in question can rely solely on the "suspected" clause, or assume that the foreigner has no benefit (principle of benefit) for the state of Indonesia, based on the selective policy principle. So in this case the presumption of innocence principle does not apply, as understood in the Criminal Procedure Law.<sup>13</sup>

However, in the case of illegal immigrants stating their desire to seek asylum and/or for certain reasons cannot be subject to deportation, they must be coordinated with the international organization that handles refugee issues and/or UNHCR to determine their status (Article 2 paragraph (2) of the Regulation of the Director General of Immigration concerning Handling of Illegal Immigrants).

Illegal immigrants may not have their residence permit status questioned while they are in Indonesia in the following cases (Article 3 paragraph (1) of the Regulation of the Director General of Immigration concerning Handling of Illegal Immigrants):

- a. Have obtained an Attestation Letter or certificate as an asylum seeker from the United Nations High Commissioner for Refugees ("UNHCR"); or
- b. Has refugee status from UNHCR.

In this provision, it is stipulated that Illegal Immigrants who are in Indonesia may not have their residence permits questioned if they have obtained an Attestation Letter (a certificate as an asylum seeker) or have refugee status issued by UNHCR as the UN High Commissioner for refugees domiciled in Indonesia. So, based on our explanation above, it can be interpreted that an illegal immigrant is not allowed to obtain an ITAS or ITAP<sup>14</sup>, because, firstly, illegal immigrants are said to be illegal immigrants because they do not have valid travel documents, such as a visa, which is the main requirement for applying for an ITAS or ITAP as referred to in the provisions of Article 48 paragraph (2) of Law 6/2011 that a residence permit is granted to a foreigner in accordance with the visa they hold.

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<sup>12</sup>S. Prakash Sinha, (1971), *Asylum and International Law*, The Hague : Martinus Nijhoff, p 95.

<sup>13</sup>M. Alvi Syahrin, (2018), *Measuring State Sovereignty from an Immigration Perspective*, *De Jure Legal Research Journal*, 18 (1), p 43-57.

<sup>14</sup>Heru Susetyo, (2004). *Policy for Handling Internally Displaced Persons (IDPs) in Indonesia and the International World*, *Journal of International Law*, 2 (1).

Secondly, that illegal immigrants are only allowed to stay temporarily in a designated place under the supervision of immigration officers, before being placed in a third country by UNHCR. This can be understood, from the provisions contained in the Refugee Declaration Form Attached to the Regulation of the Director General of Immigration on Handling Illegal Immigrants, which states:

“I understand that the Directorate General of Immigration of the Republic of Indonesia allows refugees.... to stay in designated places outside the immigration detention center while the refugees are in the process of being placed in a third country...”.

Therefore, a "refugee" or refugee or illegal immigrant is not allowed to obtain an ITAS or ITAP according to Indonesian law, regardless of whether the illegal immigrant obtains a certificate of asylum or refugee status from UNHCR.<sup>15</sup>The application for citizenship can be submitted by the applicant if he/she meets the requirements as stipulated in Article 9 letter g of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia.

Human smuggling and illegal immigration are interrelated. Illegal immigrants who successfully enter transit countries or destination countries do not always need cooperation with smuggling agents, they can also smuggle themselves into the destination country without needing smuggling agents. Human smuggling results in an increasing number of illegal immigrants.

Handling of victims of human trafficking and human smuggling is a preventive and repressive effort in order to prevent the occurrence of criminal acts of human trafficking and human smuggling. This is part of the law enforcement efforts due to the increase in international crimes or transnational crimes, such as human trafficking, human smuggling. Human trafficking is also one of the worst forms of human dignity violations and human smuggling which is increasing in number and is carried out through the very open Indonesian sea lanes. Therefore, legal regulations are needed to handle human trafficking and human smuggling in the field of immigration.<sup>16</sup>

Immigration action is “administrative action in the field of immigration outside the judicial process. In the implementation of immigration action, to ensure legal certainty and justice for foreigners affected by immigration action”. Regarding this immigration action, it has been regulated in Articles 24, 25, 26, 27, 28, 29, 30, 31 and Article 75 of Government Regulation of the Republic of Indonesia Number 31 of 1994 concerning Supervision of Foreigners and Immigration Action.

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<sup>15</sup>Schloendhadt, (1999), *The Business Of Migration: Organized Crime And Illegal Migration In Australia And The Asia Pacific Region*, Adelaide Law Review, p 21.

<sup>16</sup>Aime Zinedine Zack Sumolang, (2020), *Handling of Victims of Human Trafficking and Human Smuggling According to Law Number 6 of 2011 Concerning Immigration*, Lex Et Societatis, 3 (2), p 16-24



Security in Indonesian waters is not only guided by positive law but also by international regulations contained in UNCLOS 1982. Article 24 of Law Number 6 of 1996 concerning Indonesian Waters regulates action against violations or criminal acts occurring in Indonesian waters, whether using national or foreign vessels, which will be prosecuted based on international conventions and applicable statutory provisions.

#### 4. Conclusion

Article 120 of the Immigration Law regulates the crime of human smuggling with "a minimum prison sentence of five years and a maximum of 15 years and a fine of at least IDR 500 million and a maximum of IDR 1.5 billion". The same criminal threat also applies to attempts to commit the crime of human smuggling. The rules regarding the procedures for people entering and leaving Indonesia are regulated in Law 6/2011. In the provisions of Article 8 paragraph (1) of Law 6/2011, which states: "Everyone who enters or exits the territory of Indonesia must have valid and valid travel documents". It is regulated that everyone who enters or exits the territory of Indonesia must have valid and valid travel documents. So in this case, according to the information you provided above, the foreign national ("WNA") that you refer to as a "refugee" or refugee is a WNA who does not have valid travel documents, thereby violating the provisions as regulated in Law 6/2011.

#### 5. References

##### Books:

- Ahmad Romsan, et al., (2013), Introduction to International Refugee Law: International Law and Principles of International Protection, Bandung: Sanic Offset Printing
- Atik Krustiyati, (2012), Refugee Handling Policy in Indonesia, Study of the 1951 Refugee Convention, Surabaya: UBAYA
- Jeffrey Rewis, (2004), Sewing the Torn Sea Paradigm of the Indonesian Archipelago State, Malesung Foundation, Jakarta
- Mochtar Kusumaatmadja, (1976), Introduction to International Law, Jakarta: Bina Cipta
- Moh Arif, (2017), Immigration: An Introduction. Center for Education and Training of Ministry of Justice Employees. Jakarta: Ministry of Justice of the Republic of Indonesia
- S. Prakash Sinha, (1971), Asylum and International Law, The Hague : Matinus Nijhott
- Schloendhadt, (1999), The Business Of Migration: Organized Crime And Illegal Migration In Australia And The Asia Pacific Region, Adelaide Law Review

**Journals:**

- Adhe Ismail Ananda, (2021), Constitutionalism Concept in Implementation of Indonesian State Administration, *Jurnal Daulat Hukum*, 4 (2)
- Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto, (2018), The Role of the Judicial Commission on Supervision of Judge's Crime in Indonesia, *Jurnal Daulat Hukum*, 1 (4)
- Aime Zinedine Zack Sumolang, (2020), Handling of Victims of Human Trafficking and Human Smuggling According to Law Number 6 of 2011 Concerning Immigration, *Lex Et Societatis*, 3 (2)
- Heru Susetyo, (2004). Policy for Handling Internally Displaced Persons (IDPs) in Indonesia and the International World, *Journal of International Law*, 2 (1)
- Kadarudin, (2013), People Smuggling in the Perspective of International Law and Law Enforcement in Indonesia, *Journal of Library, Information, and Computers "Jupiter"*. XII (2)
- M. Alvi Syahrin, (2018), Measuring State Sovereignty from an Immigration Perspective, *De Jure Legal Research Journal*, 18 (1)
- Sam Fernando, (2013), Government Legal Policy (Directorate General of Immigration) in Addressing the Problem of Human Smuggling, *Postgraduate Journal of Brawijaya University*
- Sumaryono and Sri Kusriyah, (2020), The Criminal Enforcement of the Fraud Mode of Multiple Money (Casestudy Decision No.61 / Pid.B / 2019 / PN.Blora), *Jurnal Daulat Hukum*, 3 (1)
- Suryani, Suhirwan, Rudy AG Gultom, (2018), Dumai Navy Base Strategy in Dealing with Human Smuggling on the Dumai Sea Border and the Malacca Strait, *Journal of Asymmetric Warfare*, 4 (3)