

Indonesia's Policy Towards Illegal Immigrants and its Relationship with State Sovereignty

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Abstract

The increasing number of illegal immigrants entering through Indonesia to Australia has led Australia to implement policies to prevent entry his illegal immigrants, in the form of expulsion policies and third country policies. Has Indonesia as a sovereign country made policies that? quite effective in resolving the problem of illegal immigrants in the country Alone. What problems does Indonesia face with its policies? taken so far. With a Normative Juridical approach methodology, using primary and secondary data, studying and evaluating several related legal principles and norms State Sovereignty and Immigrants Illegal ones obtained from literature and statutory regulations, then analyzed descriptively qualitatively to obtain conclusions. Results research shows that Indonesian policy through Law no. 6 of 2011 about Immigration, in handling the problem of illegal immigrants Still Not yet effective and partial while still placing illegal immigrants as victims. There are no sanctions or deterrent effects for them. Principle of State Sovereignty should be used as a guide for Indonesia in making regulatory policies regarding illegal immigrants.

Keywords: Sovereignty, State, Indonesia, Immigrants, Illegal

1. INTRODUCTION

Massive migration or expulsion of people was initially only a domestic political issue. Since then, passenger transport has also crossed borders to reach other countries, so that the refugee problem eventually spread to the problems of countries in certain regions and was ultimately considered a common problem for humanity. Countries affected by illegal immigration are divided into three groups, namely: countries of origin, countries of transit and countries of destination. The countries of origin for illegal immigrants are Afghanistan, Iraq and Iran, which are usually in conflict, this is what causes their citizens to immigrate to other countries in search of a safer place for their survival. Apart from that, a stopover country is a country where illegal immigrants stopover or transit before traveling to their destination. In this case, Indonesia is the country most at risk of being affected by sending illegal immigrants to the destination countries of illegal immigrants. Regardless of the background or reason for changing status to refugee, as a country that is part of the international world and as a country that handles refugee issues with dignity, Indonesia has an obligation to protect and respect the rights of these refugees. Follow national and international laws that apply in Indonesia. As humans, these refugees still have human rights and must be respected and protected by the countries where the refugees live to obtain protection and ensure their safety. These provisions are regulated by the 1951 Convention on the Status of Refugees (*Text of the 1951 Convention Relating to the Status of Refugees*). The Convention was signed in Geneva on 28 July 1951 and later changed to the 1967 Protocol Relating to the Status of Refugees (*1967 Protocol Relating to the Status of Refugees*). This is the main objective of the convention. Article 23 of the 1951 Geneva Convention Concerning the Status of Refugees stated that "State parties must provide refugees living in their territories with the same general treatment and assistance as is provided to their nationals. "Indonesian Immigration Rules are regulated by Immigration Law No. 6 of 2011 (2011 Immigration Law), which replaced the previous Immigration Law No. 9 of 1992. This immigration issue is closely related to the movement of people across borders. In the era of globalization and trade free, in other countries which is currently attracting the attention of countries in the world, including Indonesia. This is because each country has sovereignty to regulate the movement of people in and out of its territory. The movement of people inside and outside the

territory of a country causes various consequences that beneficial and detrimental to the interests and livelihoods of the state and nation. In 2017, Indonesia discovered something odd when 18 illegal immigrants from Vietnam entered Padeglang Regency, or more precisely, the coast of Kampung Cibanua. Eighteen illegal immigrants want to seek asylum in Australia. However, investigations revealed that they were immigrants who did not meet the full requirements for immigrants. They were trapped at sea due to bad weather. These illegal immigrants used a boat about eight meters long, with 5 children and 13 adults in it, and in quite bad condition. They were found by the Banten Regional Police's Ditpol Airud unit, after an inspection, the immigrants did not have complete documents such as passport, visa and other supporting documents. From the explanation of the case above, these immigrants can be said to be illegal immigrants because they entered the territory of a country without permission.

2. METHODOLOGY

This research method uses a normative juridical type where research is carried out by collecting primary, secondary and tertiary data obtained using library research. The data that has been collected is analyzed qualitatively, the description of which is arranged systematically based on legal disciplines to achieve clarity on the issues to be discussed.

3. RESULTS AND DISCUSSION

The Concept of State Sovereignty and Illegal Immigrants

One of the main elements of statehood is control of a territorial area, within which the laws of that country apply. In this area there is the highest authority in the country. So the concept of Territorial Sovereignty emerged, sovereignty possessed by a country shows that a country is independent or not subject to the power of other countries. However, this cannot be interpreted to mean that there are no limits to sovereignty, the restrictions themselves are laws, both national law and international law. Based on the concept of sovereignty, every territorial authority of a country establishes legal provisions that regulate and supervise the movement of people in and out of that country's territory. Shaw stated that the concept of jurisdiction is always related to the Principle of State Sovereignty, the Principle of Equality and the Principle of non - Interference. National Jurisdiction is a statement to determine the area where high levels of actions carried out by government bodies are free from interference/influence and the principles of international law. *O'Brien* said:

One of the oldest doctrines of international law is that a state is sovereign within its own territory so that in principle a state will be able to prosecute in respect of acts and omissions arising within its own territory. This is certainly practical in that a state will have a vested interest in the maintenance of law and order within its own territory; it is consistent with both wider international law and traditional political theory in stressing that the first duty of any government is to maintain law and order within its own territory

Sovereignty has three main aspects, namely:

1. The external aspect of sovereignty is the right for every country to freely determine its relations with various other countries or groups without being constrained by pressure or supervision from other countries. This aspect is said to be a government policy or action that is bilateral (two countries) or multilateral in nature;
2. The internal aspect of sovereignty, namely the exclusive right or authority of a state to determine the form of the institution and the right to make the desired laws and take action to comply. Unilateral government policies;
3. The territorial aspect of sovereignty means the full and exclusive power possessed by the state over individuals and objects contained in that territory.

Looking at the sovereignty described above, it can be said that a sovereign country is a country that has the ability to regulate and manage its own domestic and foreign interests. There are two principles that give states the right to regulate the movement of foreigners into their territory. The principle of State Sovereignty is divided into two:

1. *The Principle of State Sovereignty, which emphasizes national borders and allows the exclusion of aliens (Anglo-Saxon theorists)*
2. *The Principle of Interdependence, which emphasizes the interrelationship among nations and forbids the exclusion of aliens (European and Latin American jurists).*

As for the dispute *between Att. Gen. For Canada v. Cain* (1906), the court stated that one of the rights possessed by the state is the right to refuse a foreigner entering its territory. Another state's right is to impose conditions on the entry of foreigners into its territory, as well as to expel or repatriate these foreigners. This

needs to be done especially when it is considered that the presence of foreigners in the country will threaten its security, order and government or its social and military interests. These requirements are generally stated in immigration regulations. *Goodwin-Gill* put forward several substantive and procedural reasons for the state's power to expel foreigners. According to him, the state practice recognizes expulsion if:

- a. Entering a country by violating the law;
- b. Violating the conditions of entry permit;
- c. Engaging in criminal acts;
- d. Based on political and security considerations, these foreigners must be expelled.

From an immigration perspective, *Illegal Immigration* is the movement of someone who crosses the territorial boundaries of a country in violation of the law or illegally according to the law. In Indonesia, this process becomes invalid or unlawful if it violates the provisions relating to the process of entering/exiting Indonesian territory as regulated in immigration law. People who carry out illegal immigration are called *illegal immigrants*. *Illegal immigrants* consist of two types, namely:

1. Foreigners who enter a country's territorial borders illegally (without having a visa or valid travel documents) either by land, sea or air.
2. Foreigners who legally enter a country, but whose immigration permit has expired and are still in the territory of that country and misuse or carry out activities that are not in accordance with the purpose of the immigration permit granted to them.

Legal Framework Regarding Illegal Immigrants

Sovereign countries try to regulate order in their country, one thing that needs to be regulated is the flow of people and goods from other countries to their country. The principle of state sovereignty that emerges in every country requires that the movement of people and goods be carried out legally and in accordance with established procedures. So several regulations emerge for people and goods entering and exiting a country. For everyone who wants to enter or leave illegally, these regulations are connoted as obstacles for them. These obstacles encourage various ways to enter a country's territory illegally. The movement of people from one country to another in a way that is not in accordance with the legal regulations made by a country is called *illegal immigration*. This *illegal immigration* has implications for the continued development of transnational crime, known as transnational crime, which then develops into organized crime, such as migrant smuggling *and* human trafficking. In the legal framework at the international level, the 1951 Refugee Convention and the 1967 Refugee Protocol provide several regulatory provisions regarding the basic definition of refugees, along with terms that include refugees and those that are excluded from being referred to as refugees, as well as regarding refugee status. Regulates the legal status of refugees in countries of asylum, their rights and obligations, including the right to be protected from forced repatriation, or to be returned to a territory where their life or freedom is threatened. It also regulates state obligations, including collaborating with UNHCR in carrying out its functions and facilitating its duties to monitor the implementation of the 1951 Refugee Convention. Jamin Ginting explained:

Related to the authorities, not only the national government strives forward to overcome those illegal practices, but also the international communities consider it necessary to have the international legal instruments which strictly prohibit and penalize those crimes.

Therefore, within the legal framework of illegal immigrants, several governing conventions are the UN Convention on Organized Crime/Palermo Convention of 2000 (*United Nations Convention Against Transnational Organized Crime*); *Protocol Against The Smuggling of Migrants by Land, Sea and Air, Supplementing United Nations Convention Against Transnational Organized Crime Year 2000*; and *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime Year 2003*. National law or what is known as the positive law of a country is a collection of written legal principles and rules which are currently in force and binding in general or specifically and are enforced by or through the government or courts in the country. In Indonesia, the national legal framework governing illegal immigrants is spread across several laws and regulations, namely Law No. 6 of 2011 concerning Immigration, along with Government Regulation Number 31 of 2013 concerning Implementing Regulations Law No. 6 of 2011 concerning Immigration, Law Number 12 of 2006 concerning Citizenship, Law Number 5 of 2009 concerning Ratification of *the United Nations Convention Against Transnational Organized Crime*, Law No. 14 of 2009 concerning *Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, Law No. 15 of 2009 concerning *Ratification of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United*

Nations Convention Against Transnational Organized Crime. The United Nations Convention Against Transnational Organized Crime and its two additional protocols are a form of international agreement that binds the countries that sign it, giving rise to rights and obligations for those countries. However, an international agreement does not directly bind the countries that sign it.

According to *the Boer Mauna*, binding oneself to international agreements depends on the national legal provisions of each country. So far, handling of illegal immigrants in Indonesia has been carried out using the Immigration Law, Law Number 6 of 2011 which has adopted the principles contained in the United Nations Convention Against Transnational Organized Crime and its two additional protocols. Through immigration law, the state has the right to regulate the presence of foreigners in the territory of the Unitary State of the Republic of Indonesia. Indonesia, as a sovereign country, has the right to regulate the existence of illegal immigrants, both those who come with documents and those who are undocumented. However, in its implementation it is felt that this Law has not been able to effectively regulate the presence of illegal immigrants in Indonesia. The use of the word illegal immigrant shows that asylum seekers and refugees are still considered part of immigrants in general, not in another category, namely refugees. Indonesian immigration refuses to qualify asylum seekers and refugees in a special category not as illegal immigrants on the grounds that Indonesia has not yet ratified the 1951 Refugee Convention.

Law Number 6 of 2011 provides a definition of Human Smuggling (*people smuggling*) in Article 1 Number 32, namely:

Human smuggling is an act aimed at seeking profit, either directly or indirectly, for oneself or for another person, which involves bringing a person or group of people, whether organized or unorganized, or ordering another person to bring a person or group of people, either in an organized or unorganized manner. organized or unorganized, who do not have the legal right to enter the territory of Indonesia or leave the territory of Indonesia and/or enter the territory of another country where the person does not have the right to enter the territory legally, either by using valid documents or fake documents, or without using Travel Documents, whether through immigration inspection or not.

Handling for victims of Human Smuggling and Human Trafficking is regulated in Articles 86 to 90 of Law Number. 6 of 2011, however, the provisions in these articles are unable to provide a deterrent effect *for* illegal immigrants to be able to re-attempt to be smuggled. The principle adopted from the Protocol on Human Smuggling (*Smuggling of Migrants*) is to place illegal immigrants as victims *of* smuggling, namely people who are used as objects for economic gain by paying a certain amount of money to *the smuggler*. By not positioning immigrants as part of the smuggling business and being subject to criminal sanctions, illegal immigrants will not be deterred from continuing to use smuggling networks to leave Indonesia for Australia. There are no immigration administrative measures that can be imposed on illegal immigrants who are intentionally smuggled. They were actually placed in Immigration Detention Centers, which actually increased the burden on the Indonesian government. These illegal immigrants must also be given special treatment, with all their basic living needs fulfilled in Indonesia, and their rights must be ensured so that they are not violated. The Indonesian government must also facilitate illegal immigrants who are victims of smuggling to return to their country of origin. Indonesia must also take a role in efforts to prevent and eradicate immigrant smuggling and human trafficking.

The provisions in the form of criminal sanctions are only aimed at immigrant *smugglers*, in Article 120 of Law no. 6 of 2011 concerning Immigration, namely:

Every person who commits an act aimed at seeking profit, either directly or indirectly, for himself or for another person who brings a person or group of people, whether organized or unorganized, or orders another person to take a person or group of people, whether organized or unorganized, who do not have the legal right to enter the territory of Indonesia or leave the territory of Indonesia and/or enter the territory of another country where the person does not have the right to enter the territory legally, either by using valid documents or fake documents, or without using Travel Documents, whether through immigration inspection or not, shall be punished for Human Smuggling with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 500,000,000.00 (five hundred million rupiah and a maximum of Rp. 1,500,000,000.00 (one billion five hundred million rupiah).

Government Regulation No.31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration in Article 1 number 29 provides the definition:

Human smuggling is an act aimed at seeking profit, either directly or indirectly, for oneself or for another person, which involves bringing a person or group of people, either in an organized or unorganized manner, or ordering another person to bring in a person or group of people, either in an organized or unorganized manner. organized or unorganized, who do not have the legal right to enter the Territory of Indonesia or leave the Territory of Indonesia and/or enter the territory of another country where the person does not have the right to enter the territory legally, either by using valid documents or fake documents, or without using Travel Documents, whether through immigration inspection or not.

This Government Regulation basically adopts the same principles as in Law No. 6 of 2011 concerning Immigration. So it can be said, this government regulation also does not solve the problem of illegal immigrants in Indonesia. Victims of smuggling, *who* are generally illegal immigrants, are not subject to legal sanctions. It is worth asking again whether they can be said to be victims, considering that the desire to be smuggled comes from the illegal immigrants themselves. This means that there is a "mutualistic symbiotic" relationship or a mutually beneficial situation for both parties. In Indonesia, the principles mandated by the Palermo Convention which were adopted by Law no. 6 of 2011 concerning Immigration, which places these illegal immigrants as victims of migrant smuggling, must be reviewed in the interests of the nation and state.

4. CONCLUSION

Indonesia is a sovereign country. State sovereignty is at the highest position of a country. The state has sovereignty to regulate its interests, including the issue of foreigners entering and leaving the country. The problem of illegal immigrants is increasingly disrupting Indonesia's security and defense stability. Government policy through existing laws and regulations, namely Law No. 6 of 2011 concerning Immigration has not been able to provide solutions to several existing problems, including: there is no clarity regarding the rules regarding illegal immigrants (both criminal and administrative sanctions) because what is regulated in the Immigration Law is only Even smuggled migrants still position illegal immigrants as victims which does not provide a deterrent effect for them to be smuggled back. Even though Indonesia has not ratified the 1951 Refugee Convention, the Principle of State Sovereignty should be used as a basis for Indonesia in making policies regarding handling existing illegal immigrants. This means that Indonesia, as a sovereign country, must view that the interests of the Indonesian people take precedence over other interests, in making a policy. Don't let other countries' problems become problems in our country and we also have to "solve" problems that we never wanted.

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