



LEGAL POLICY AGAINST PEOPLE SMUGGLING AS A CRIME OF TRAFFICKING IN PERSONS WITH A TRANSNATIONAL DIMENSION

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ABSTRACT

This research investigates Indonesia's legal framework for addressing human smuggling, focusing on the integration of penal policies targeting its root causes and evaluating the impact of international collaborations in law enforcement. Despite existing literature on human smuggling, critical gaps remain, particularly in understanding the role of criminal policy as part of social policy and the practical effects of international cooperation. The study aims to answer two primary questions: the role of criminal policy in addressing human smuggling crimes in Indonesia and the non-penal policies Indonesia has implemented to combat human smuggling. This research adopts a normative legal methodology, analyzing Indonesia's Criminal Code, the Eradication of Trafficking in Persons Law, the Suppression of Migrant Smuggling Law, and relevant international frameworks like the Bali Process. The study reveals that an effective approach to combating human smuggling requires a balance of penal and non-penal measures, strong adherence to territorial sovereignty, and enhanced international cooperation. It finds that while penal policies act as deterrents, non-penal strategies, such as victim protection and public awareness campaigns, are equally crucial. Additionally, the study highlights the importance of regional and international collaborations in strengthening law enforcement, emphasizing the need for specialized legal framework to address human smuggling.

1. Introduction

The issue of human smuggling in Indonesia has become increasingly critical. People smuggling creates more significant challenges for the countries where

illegal immigrants seek asylum.¹ This is particularly true for Indonesia, which has become a hot spot for illegal immigrants.² Initially, illegal immigrants apprehended by security forces at the country's borders were primarily *on route* to Australia, using Indonesia merely as a transit point.³ However, Indonesia has now emerged as a primary destination for such migrants. This shift has prompted cooperative efforts between the Indonesian and Australian governments to address the human smuggling problem in both countries.⁴ Despite these efforts, the legal framework addressing human smuggling remains limited, with relevant provisions found in several articles of Law Number 15 of 2009, Law Number 6 of 2011, and Government Regulation Number 31 of 2013. Under these regulations, only the perpetrators of migrant smuggling can be prosecuted, while broader issues related to law enforcement remain largely unaddressed.⁵ The increasing frequency of causes related to the illegal entry and exit of individuals to and from Indonesia further underscores the country's continuing status as a target for global human smuggling networks.⁶ Additionally, the growing incidence of illegal migration highlights ongoing challenges regarding the capacity of the Government of the Republic of Indonesia to effectively combat human smuggling on the international stage.⁷

Several factors contribute to this issue. First, there exists a perceived gap in the implementation and enforcement of regulations addressing human smuggling in Indonesia, even though the country has ratified and enacted multiple laws and frameworks on this matter. Human smuggling is regulated under Law Number 21

¹ Melissa Curley, and Kahlia Vandyk., The securitisation of migrant smuggling in Australia and its consequences for the Bali Process, *Australian Journal of International Affairs*, Vol.71, no.1, 2017, page.51.

² Michele Ford, and Lenore Lyons., Outsourcing border security: NGO involvement in the monitoring, processing and assistance of Indonesian nationals returning illegally by sea, *Contemporary Southeast Asia*, Vol.3, no.4, 2013, page.227.

³ Antje Missbach., Making a career in people-smuggling in Indonesia: protracted transit, restricted mobility and the lack of legal work rights, *Sojourn: Journal of social issues in southeast Asia*, Vol.30, no.2, 2015, page.239; See too, Antje Missbach., Doors and fences: Controlling Indonesia's porous borders and policing asylum seekers, *Singapore Journal of Tropical Geography*, Vol.35, no.2, 2014, page.232.

⁴ Wayne Palmer, and Antje Missbach., Trafficking within migrant smuggling operations: Are underage transporters 'victims' or 'perpetrators?', *Asian and Pacific Migration Journal*, Vol.26, no.3, 2017, page.291.

⁵ International Organization for Migration (IOM)., *Migration Governance Indicators Profile 2024 – Republic of Indonesia*, 2024, page.203; See too, Mabes Polri. (2024, November 22)., *Bareskrim polri beberkan modus tppo sepanjang November-Oktober 2024*; See too, Rumondang Naibaho., Bareskrim Bongkar 397 Kasus TPPPO Sebulan Terakhir, 904 Orang Diselamatkan, *Detiknews*, December 15, 2024. See too, Nugroho, Rony Ariyanto., *Bareskrim Polri Merilis Hasil Pengungkapan TPPPO*, *Kompas*, November 22, 2024.

⁶ Ridwan Arifin, Rodiyah Rodiyah, Waspiyah Waspiyah, Asyaffa Ridzqi Amandha, Elizabeth Yunita Krisnawati, Tirta Sandi, and Michael Timothy Napitupulu., The Direction of Indonesia's Legal Policy on the ASEAN Mutual Legal Assistance Treaty in Criminal Matters: A Path to Law Reform in Cross-Border Crime Enforcement in Southeast Asia, *Journal of Law and Legal Reform*, Vol.5, no.2, 2024, page.768.

⁷ International Organization for Migration (IOM)., *Buku Petunjuk Bagi Petugas: Dalam Rangka Penanganan Kegiatan Penyelundupan Manusia dan Tindak Pidana yang Berkaitan dengan Penyelundupan Manusia; Dilengkapi dengan UU tentang Keimigrasian, Undang-undang Republik Indonesia No. 6 Tahun 2011*, Jakarta, International Organization for Migration (IOM), 2009, page.132.

of 2007 concerning the Eradication of Trafficking in Persons (hereinafter referred to as *Tindak Pidana Perdagangan Orang*/TPPO Law), Law Number 15 of 2009 on the Suppression of Migrant Smuggling by Land, Sea, and Air, and Law Number 6 of 2011 on Immigration, along with Government Regulation Number 31 of 2013. Furthermore, in 2017, Indonesia enacted Law Number 12 of 2017 on the Ratification of the ASEAN Convention Against Trafficking in Persons, especially concerning women and children.

However, despite this legal framework, there remains a lack of specific provisions explicitly targeting human smuggling cases, which often overlap with trafficking in persons. This creates challenges for law enforcement officers when encountering indications of human smuggling, as they must navigate through general immigration and criminal laws that do not directly address human smuggling as a distinct crime. In practice, immigration officers typically rely on Law Number 6 of 2011, while the Indonesian National Police refer to the Criminal Code, leading to potential discrepancies in enforcement. This situation hinders effective prosecution, particularly of perpetrators involved in organized smuggling networks. While the existing laws regulate trafficking in persons and related crimes, a comprehensive legal framework specifically addressing the prevention and eradication of human smuggling crimes is absent. The current framework often criminalizes only Indonesian citizens as suspects (based on immigration laws), while perpetrators operating smuggling networks frequently evade legal consequences.

The limitations in Law Number 6 of 2011, which focuses on immigration violations rather than human smuggling as a broader phenomenon, exacerbate this issue. Victims and other participants involved in smuggling cases cannot be effectively protected or prosecuted due to the absence of provisions targeting the broader dimensions of human smuggling.⁸ A dedicated legal framework addressing human smuggling comprehensively covering prevention, prosecution, and victim protection is urgently needed to bridge these gaps and strengthen enforcement measures. The lack of comprehensive legal provisions for handling human smuggling has resulted in the prosecution of only Indonesian citizens as suspects (based on the Immigration Law), while the perpetrators, who are often part of the smuggling network, evade legal consequences. This issue arises because Law Number 6 of 2011 addresses human smuggling in limited scope, permitting prosecution only of the smugglers, while those who pay to be smuggled victims and other participants cannot be prosecuted due to the absence of relevant provisions. This situation contrasts with the legal framework for eradicating human trafficking, which is specifically addressed in the TPPO Law. Under criminal law, all perpetrators of criminal acts who are capable of being held responsible may face criminal liability, whether as the principal offender, an accomplice, or a participant.

Given this, a comprehensive approach is needed, involving both penal and non-penal measures, to effectively address human smuggling cases in Indonesia. There are the critical gaps in Indonesia's legal and policy frameworks for combating human smuggling, a crime that continues to affect vulnerable populations despite existing laws. While Indonesia has ratified numerous international conventions and

⁸ Missbach Antje., People smuggling in Indonesia: Complexities, (mis) conceptions and their consequences for sentencing, *Australian Journal of Asian Law*, Vol.17, no.2, 2016, page.253.

enacted national legislation, including Law Number 21 of 2007, Law Number 15 of 2009, and Law Number 6 of 2011, these regulations do not adequately distinguish human smuggling as a separate crime from human trafficking. The overlap with human trafficking and the limitations in the current legal framework result in discrepancies in enforcement, with law enforcement often unable to effectively prosecute organized smuggling networks or protect victims. In this context, by examining the role of criminal policy and non-penal measures, the study aims to explore both penal and non-penal policy interventions to bridge these gaps.

Moreover, existing literature has explored various aspects of human smuggling, several critical gaps remain unaddressed. For instance, while some studies examine the roles of smugglers in migration and border crossings,⁹ they do not explore the strategic integration of penal policies that target the root causes of smuggling. Additionally, although research on law enforcement efforts in handling people smuggling provides important insights,¹⁰ it often overlooks the practical impact of international collaborations in enhancing these efforts. The role of international frameworks, such as the Bali Process and regional cooperation in addressing irregular migration, has been discussed,¹¹ but their effectiveness in improving law enforcement strategies has not been fully explored. Furthermore, while some studies discuss the resilience of criminal networks involved in people smuggling,¹² they fail to address how international cooperation and targeted penal measures could disrupt these networks. Moreover, the role of “turnback” policies and their implications for smuggling operations has been a topic of debate,¹³ yet how these policies interact with broader legal frameworks to tackle human smuggling remains underexplored. Therefore, to address this gap, this study aims to investigate the following research questions:

RQ1. What is the role of criminal policy, as part of social policy, in addressing human smuggling crimes in Indonesia?

RQ2. What non-penal policies have been implemented by Indonesia to combat human smuggling?

⁹ Antje Missbach., Ruling out rescue at sea?: Rohingya, maritime escapes, and the criminalization of smugglers-cum-rescuers in Indonesia, *Focaal*, Vol.21, no.99, 2024, page.36; See too, Antje Missbach, and Wayne Palmer., Facilitated but unauthorised return: the role of smugglers in return migration and clandestine border crossings between Malaysia and Indonesia, *Journal of Ethnic and Migration Studies*, Vol.50, no.10, 2024, page.2655.

¹⁰ Herbin Marulak Siahaan., Law Enforcement in The Handling of People Smuggling Crime in Indonesia, *Law Reform*, Vol.16, no.2, 2020, page.173; See too, Shinta Hadiyantina., The handling of people smuggling involving foreign nationals as efforts to safeguard Indonesian territories, *International Journal of Diplomacy and Economy*, Vol.6, no.1, 2020, page.95.

¹¹ Masitoh Indriani, and Amira Paripurna., Biometric Data Sharing in Addressing Irregular Migration and Security Issues within the Bali Process Framework for Indonesia and ASEAN Member States, *JSEHR*, Vol.4, no.2, 2020, page.449; See too, Sébastien Moretti., Contested regionalism in the Asia-Pacific: the case of the Bali Process and the protection of refugees, *Journal of Ethnic and Migration Studies*, Vol.48, no.12, 2022, page.2866.

¹² Peter Munro., People smuggling and the resilience of criminal networks in Indonesia, *Journal of Policing, Intelligence and Counter Terrorism*, Vol.6, no.1, 2011, page.45.

¹³ Antje Missbach, and Wayne Palmer., People smuggling by a different name: Australia's 'turnbacks' of asylum seekers to Indonesia, *Australian journal of international affairs*, Vol.74, no 2, 2020, page.196.

The novelty of this research lies in its examination of human smuggling prevention from a dual approach: the strategic integration of penal policies that target root causes of smuggling and the evaluation of the practical impact of international collaborations in enhancing law enforcement efforts.

2. Research Methods

This research employs a normative legal method, focusing on an examination of Indonesia's legal framework concerning human smuggling and analyzing the relevant laws and regulations. Normative legal research is conducted by studying literature or secondary data. The statute approach is used to examine the specific laws and regulations addressing this issue. Key legal sources include the Criminal Code, particularly Articles 2 and 3, which establish Indonesia's territorial jurisdiction for criminal law enforcement. This research also examines laws related to human trafficking issues, namely Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons (TPPO Law), Law Number 15 of 2009 on the Suppression of Migrant Smuggling by Land, Sea, and Air, and Law Number 6 of 2011 on Immigration, along with Government Regulation Number 31 of 2013. For the analysis, the research goes beyond simply identifying the laws by examining their content, basis, and the reasoning behind their creation. This includes understanding the purpose of these regulations and how they are intended to protect public interests by addressing human smuggling. The study looks at how these laws function in practice, evaluating their implementation and effectiveness. Data for this study are collected through library research, focusing on legal texts, academic publications, and secondary data sources. The analysis was conducted using descriptive analysis to provide a detailed overview of how these laws are applied, their practical impact, and their effectiveness in addressing human smuggling. Descriptive analysis, in this context, helps to identify patterns in legal enforcement and the challenges associated with combating human smuggling through these laws. Additionally, the study emphasizes the transnational dimension of human smuggling, recognizing that effective law enforcement requires strong international cooperation. It aims to explore how Indonesia's legal framework integrates with global efforts to combat human smuggling and the role of international treaties and agreements in enhancing enforcement mechanisms.

3. Results and Discussion

3.1. People Smuggling: Legal, Economic, and Humanitarian Implications

The practice of people smuggling has increased in recent decades, with significant reports of unauthorized immigration rising in many countries, including developed nations.¹⁴ People smuggling typically occurs with the consent of the person or group wishing to be smuggled, and the most common reasons include the opportunity to secure a job or improve economic status, the hope of achieving a better livelihood for oneself or one's family, and the desire to escape conflicts in

¹⁴ Anna Triandafyllidou., Migrant smuggling: Novel insights and implications for migration control policies, *The annals of the American academy of political and social science*, Vol.676, no.1, 2018, page.215; See too, Ilse Van Liempt, and Stephanie Sersli., State responses and migrant experiences with human smuggling: A reality check, *Antipode*, Vol.45, no.4, 2013, page.1031.

the country of origin.¹⁵ People smuggling is driven by many factors, particularly push factors that compel individuals to leave their home country for destination countries. One of the most significant factors is economic hardship. Countries that cannot provide adequate employment opportunities create a situation where many unemployed individuals seek to migrate, hoping to find work elsewhere.¹⁶ A notable example is Mexico, where the failure to create jobs, coupled with low minimum wages, has driven many immigrants to seek opportunities in other countries.¹⁷

According to the International Organization for Migration, there are three main factors that contribute to people smuggling. The first is push factors, which include conditions such as war, social conflict, poverty, and a lack of opportunities for legal migration. These factors drive individuals to leave their home countries in search of better prospects elsewhere. The second factor is pull factors, which include the attraction of safe neighborhoods, higher economic opportunities, and the presence of family and cultural connections in destination countries. These factors make certain countries appealing for migrants seeking a better life. The third is combined factors, which involve crossing national borders, access to people smuggling syndicates, ease of communication and travel, and vulnerability to exploitation by organized crime syndicates. These combined factors facilitate the illegal movement of people and make them more susceptible to smuggling networks.¹⁸

The pull factors for human smuggling in Indonesia include its vast geography but a lack of a regional security task force. Indonesia is strategically located as a transit point for migrants heading to destination countries such as Australia. Indonesia has not ratified the 1951 Geneva Convention on Refugees and has only ratified the 1967 Protocol through Law Number 15 of 2009. As a result, the Indonesian state is in a weak position to address the issue of asylum seekers and refugees from other countries, as it lacks national regulations specifically addressing the issue. Additionally, the presence of the UNHCR in Indonesia means that the Indonesian government refers every foreigner who enters under the pretext of seeking asylum to the UNHCR for refugee status determination.¹⁹ The Indonesian government allows immigrants to stay in the country until a solution is found.²⁰ As a result, illegal immigrants feel safe coming to and residing in Indonesia, entering its territory by exploiting the presence of the UNHCR under the guise of seeking asylum.

This shows that apart from economic issues, people smuggling can also be

¹⁵ Eamon Aloyo, and Eugenio Cusumano., Morally evaluating human smuggling: the case of migration to Europe, *Critical Review of International Social and Political Philosophy*, Vol.35, no.2, 2021, page.127.

¹⁶ Richard Mines, and Alain De Janvry., Migration to the United States and Mexican rural development: A case study, *American journal of agricultural economics*, Vol.64, no.3, 1982, page.449.

¹⁷ Michael P. Todaro and Lydia Maruszko., Illegal migration and US immigration reform: A conceptual framework, *Population and development review*, Vol.12, no.4, 1987, page.108.

¹⁸ International Organization for Migration (IOM)., *Migration Governance Indicators Profile 2024 – Republic of Indonesia*. IOM, page.202.

¹⁹ Rohaida Nordin, Norilyani Hj Md Nor, and Rosmainie Rofiee., Ineffective Refugee Status Determination Process: Hindrance to Durable Solution for Refugees Rights and Protection, *Indonesia Law Review*, Vol.11, no.6, 2021, page.73.

²⁰ UNHCR., *The UN Refugee Agency*, Perlindungan Pengungsi di Indonesia.

triggered by conflicts in the country of origin. Prolonged conflicts or wars often lead to poverty, resulting in a large unemployed population. Wars or conflicts are often driven by political factors, security issues, tribalism, religion, and other factors. These conflicts act as a catalyst for illegal immigrants to leave their home areas in search of safety or to escape violence. As a result, they seek asylum in developed countries that can offer safety and protection of human rights.²¹ Many instances of human smuggling also arise from immigrants being lured by smugglers' promises. Furthermore, external factors from the destination country also play a significant role in driving illegal immigration. These include the stable economic systems of destination countries, which, in the immigrants' perception, offer job opportunities with decent wages. In developed destination countries, businesses often welcome and utilize the labor of illegal immigrants, as their wages are significantly lower than those of domestic workers.²²

In every crime, the role of the victim is crucial. To understand crime in its full context, the role of victims must be considered. In the case of human smuggling, it is clear that victims play a functional role in the commission of the crime. The victim's actions, either directly or indirectly, may facilitate the occurrence of the crime such as their active participation in illegal activities to achieve personal or external goals thereby contributing to their victimization. Moreover, the victim's circumstances and conditions may create psychological drivers or motives, making them more susceptible to becoming victims of crime.²³

Third, there is often confusion between the concepts of human smuggling and human trafficking in practice. The legal vacuum has led to an unclear definition of human smuggling, which is frequently conflated with human trafficking. In reality, the activities and criminal offenses associated with these two concepts are distinct. According to the Indonesian Dictionary, a refugee is defined as "a person who seeks a safe place when their area is in danger."²⁴ However, this definition in Indonesian terminology does not specify the geographical context or the cause for seeking refuge. In contrast, Black's Law Dictionary defines a refugee as "a person who arrives in a country to settle there permanently, a person who immigrates."²⁵ The Concise Oxford Dictionary provides the definition of a refugee as "a person taking refuge, especially in a foreign country from war, persecution, or natural disaster."²⁶

According to Farhana, people smuggling is distinct from human trafficking. Human smuggling focuses primarily on the illegal transportation of individuals from one country to another, which results in profit for the smuggler, without necessarily

²¹ Mohammad Thoriq Bahri., Understanding the Pattern of International Migration: Challenges in Human Rights Protection, *Jurnal Hukum Unissula*, Vol.8, no.2, 2021, page.89.

²² Paolo Campana, and Federico Varese., Exploitation in human trafficking and smuggling, *European Journal on Criminal Policy and Research*, Vol.22, no.3, 2016, page.101; See too, Stephanie Maher., Out of West Africa: Human smuggling as a social enterprise, *The Annals of the American Academy of Political and Social Science*, Vol.676, no.1, 2018, page.46.

²³ Iman Santoso., *Perspektif Imigrasi dalam United Nation Convention Against Transnational Organized Crime*, Cetakan Pertama, Jakarta, Perum Percetakan Negara RI, 2007, page.26.

²⁴ Yus Badudu., *Kamus Bahasa Indonesia*, Jakarta, Sinar Harapan, 1994, page.54.

²⁵ Bryan A. Garner., *Black's Law Dictionary*, Eighth Edition, Thomson West, St. Paul Minn, 1999, page.1307.

²⁶ Allen, Ronald E., *The Concise Oxford Dictionary*, Oxford, Clarendon Press, 1990, page.321.

involving exploitation of the individuals. While there may be victims in human smuggling, this is more of a risk associated with the activity rather than an intended outcome.²⁷ According to the United Nations Protocol Against the Smuggling of Migrants by Land, Sea, and Air and the United Nations Convention Against Transnational Organized Crime, migrant smuggling refers to the illegal entry of an individual into the territory of a country (illegal entry) where the individual is not a citizen or does not have a residence permit.²⁸ In this context, the act of illegal entry is governed by the laws and regulations of the country being entered.

According to Philip Martin and Mark Miller, smuggling is a term usually reserved for individuals or groups who, for profit, move people illegally (violating the provisions of the law) across the borders of a country.²⁹ It can be concluded that people smuggling refers to the organized illegal movement of a group or individual across international borders, usually in exchange for payments for services. Migrant smuggling is an act, either direct or indirect, aimed at obtaining financial or other material benefits by illegally introducing a person who is not a citizen or permanent resident of a particular country into that country. People smuggling is a crime because it clearly violates the legal provisions of the countries concerned. It is widely recognized as a violation of human rights and a form of contemporary slavery, where immigrants are mistreated. Very often, the conditions of travel are inhumane—people are crammed into overcrowded boats, and there are frequent fatal accidents, such as boat sinkings. Upon arrival at their destination, their illegal status forces them into slavery, where smugglers exploit them for years in the illegal labor market. Immigrants are indirectly exploited by certain parties for material gain.³⁰

On the other hand, trafficking has a clear purpose from the outset, with the person being sent as an object of exploitation.³¹ Deception, coercion, or violence are essential elements of trafficking. People smuggling, on the other hand, stems from the desire to become an illegal immigrant. Therefore, the causes leading to illegal immigration can also contribute to people smuggling. People smuggling has become a lucrative business, with profits estimated to range from US\$5,000 to US\$10,000 annually. Based on this estimate, at least 1,000,000 immigrants are forced to pay an average of US\$5,000 to US\$10,000 when crossing borders between countries. The International Organization for Migration (IOM) notes that people smuggling, often referred to as the dark side of globalization, is a growing

²⁷ Farhana, *Aspek Hukum Perdagangan Orang di Indonesia*, Yogyakarta, Sinar Grafika, 2010, page.17.

²⁸ International Organization for Migration (IOM)., *Migration Governance Indicators Profile 2024 – Republic of Indonesia*. IOM, 2024, page.201.

²⁹ Philip Martin & Mark Miller., Smuggling and Trafficking: A Conference Report, *International Migration Review Jurnal*, Vol. 34, No. 3, 2000, page.3.

³⁰ International Organization for Migration (IOM)., *Migration Governance Indicators Profile 2024 – Republic of Indonesia*, IOM, 2024, page.201; See too, Kurnia, Asep., *Petunjuk Penanganan Tindak Pidana Penyelundupan Manusia: Pencegatan, Penyidikan, Penuntutan, dan Koordinasi di Indonesia*, Jakarta, International Organization for Migration, 2012, page.132.

³¹ Farhana., *Aspek Hukum Perdagangan Orang di Indonesia*, Yogyakarta, Sinar Grafika, 2010, page.112; See too, Article 2 Undang-Undang Nomor 21 of 2007 concerning *Pemberantasan Tindak Pidana Perdagangan Orang*.

and thriving enterprise.³²

3.2. Criminal Law Policy in Preventing the Crime of People Smuggling

Every independent state is fundamentally sovereign. Based on this sovereignty, the state regulates its jurisdiction over both its citizens and foreigners. However, the sovereignty of one country may conflict with the sovereignty of another, which is when international law comes into play. In other words, sovereignty is limited by the sovereignty of other states, and this relationship is governed by international law. States' respect for and adherence to international law is essential to avoid conflicts with the sovereignty of other states. International law exists and is followed not because of punishments or sanctions, but because it is necessary for maintaining social order within the international community.³³

State sovereignty can be approached from both internal and external perspectives. From the internal side, sovereignty is viewed as state power within its territory or boundaries. This refers to sovereignty within the state's own domain, allowing it to exercise jurisdiction over its authority. In this context, the state can also implement its national laws. Everyone within a country's territory is subject to the legal authority of that country. For this reason, the adage *qui in territorio meo est, etiam meus subditus est* (if someone is in my territory, then they are also subject to me) applies.³⁴ On the other hand, sovereignty from the external perspective looks at or positions the state in its relations with other countries.

Indonesia adheres to the principle of territoriality in the application of criminal laws (Article 2 of the Criminal Code).³⁵ Based on this principle, officers at all levels (investigation, prosecution, court, and execution) have the authority to handle any act that constitutes a criminal offense under Indonesian law, in accordance with the applicable procedural law, if the scene of the criminal offense (*locus delicti*) occurs within the territory of the Republic of Indonesia. This principle is an embodiment of the state's sovereignty over its jurisdiction.

This territorial principle not only applies to the waters, land, and airspace of Indonesia but is also extended to cover Indonesian water vessels and aircraft located outside the territory of Indonesia (Article 3 of the Indonesian Criminal Code).³⁶ With this expansion, officers can take legal action against those involved

³² Philip Martin & Mark Miller., Smuggling and Trafficking: A Conference Report, *International Migration Review Jurnal*, Vol. 34, No. 3, 2000, page.3.

³³ Wagiman., *Hukum Pengungsi Internasional* (1st ed.), Yogyakarta, Sinar Grafika, 2021, page.23.

³⁴ Huala Adolf., *Aspek-aspek Negara dalam Hukum Internasional*, Jakarta, Rajawali Press, 1996, page.111.

³⁵ Mokhammad Najih., Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila, *Journal of Indonesian Legal Studies*, Vol.3, no.4, 2018, page.149.

³⁶ Efendi Efendi Lod Simanjuntak Lod, and Anatoliy Kostruba., Application of Universal Jurisdiction Principles to Cross-Country Money Laundering., *Law reform*, Vol.19, no.1, 2023, page.50; See too, Arie Afriansyah, Aristyo Rizka Darmawan, and Andreas Pramudianto., Enforcing Law in Undelimited Maritime Areas: Indonesian Border Experience, *The International Journal of Marine and Coastal Law*, Vol.37, no.2, 2022, page.291; See too, Maria Maya Lestari, and Melda Kamil Ariadno., The Importance of Internal Waters Delimitation to Secure State Sovereignty: A Case of Archipelagic State of Indonesia, *Pertanika Journal of Social Sciences & Humanities*, Vol.27, no.2, 2019, page.215; See too, Lestari Nugraha, and Robert Lihtorng Chen., The current legal regime of the Indonesian outer small islands, *Griffith Law Review*, Vol.32, no.4, 2023, page.470; See too, Yordan Gunawan, Andi Agus Salim, Ewaldo Asirwadana, and Satya Bayu Prasetyo.,

in the crime of human smuggling if the offense occurs aboard an Indonesian ship, boat, or aircraft, even if the conveyance is outside the geographical territory of Indonesia. However, this does not mean that Indonesian officers have exclusive territorial rights over Indonesian conveyances within the jurisdiction of another country. Officers of the country where the Indonesian conveyance is located also have the right to take legal action against criminal acts that occur on the conveyance.

The territorial principle emphasizes the place of the crime (*locus delicti*) in relation to human smuggling. Even if the illegal immigrants involved in human smuggling activities, or those being smuggled (people smuggling/people smuggled), engage in a series of activities outside the territory of Indonesia, if they are found illegally within Indonesia's territory, then based on this principle, the crime is considered to have occurred within the territory of Indonesia. Related to the territorial principle, it can be seen from the scope of the area where immigration rules apply, as referred to in Article 1 of Law Number 6 of 2011, that immigration is concerned with the movement of people entering or leaving the territory of Indonesia and its supervision in order to maintain the sovereignty of the state. The territory of the Republic of Indonesia encompasses the entire territory of Indonesia, as well as certain zones established by law. The application of criminal provisions against perpetrators of human smuggling crimes is guided by the territorial principle, meaning that as long as the criminal offense occurs within the territory of Indonesia, the laws and regulations related to immigration apply to both Indonesian citizens and foreigners.³⁷ Regarding the territory of the State of Indonesia, it is important to understand that according to Article 1, number 1 of Law Number 43 of 2008, it is stated:

"The territory of the Unitary State of the Republic of Indonesia, hereinafter referred to as the State Territory, is one of the elements of the state, which consists of a unity of land, waters, inland waters, archipelagic waters, and territorial seas, along with the seabed and the land beneath it, as well as the airspace above it, including all sources of wealth contained therein."

This explicitly means that the state has full sovereignty in regulating and managing its territorial area. When examined further, both Law Number 43 of 2008 and Law Number 6 of 2011 affirm the state's sovereignty throughout the territory of Indonesia, particularly in relation to legislation and the national legal system that binds both individuals and groups while in the territory of Indonesia. As a result, criminal legislation applies to all criminal acts occurring within the territory of the state, whether committed by its own citizens or by foreigners. The application of the principle of territoriality to water vehicles is based on the nationality status of a ship, as Article 60, paragraph (1) of Law Number 17/2008 explicitly states that ships registered in Indonesia are given a Nationality Certificate by the Minister.³⁸

In addition, Article 92 of UNCLOS states that ships must sail under the flag of a state. This means that state sovereignty absolutely applies to the nationality status of Indonesian vessels, so when a ship is used to commit crimes, the laws and

Perspective of International Law on Maritime Dispute: Case Between Kenya and Somalia, *Jurnal Hukum*, Vol.37, no.2, 2021, page.72.

³⁷ Article 8 Law No. 6 of 2011 concerning Immigration.

³⁸ Article 60 point (1) Law No. 17 of 2008 concerning Shipping.

regulations of the Republic of Indonesia apply. For example, if an Indonesian-flagged fishing boat is used to commit human smuggling crimes on the high seas or outside the territorial sea, the perpetrators who use their ships to commit crimes can be punished in accordance with the provisions of Indonesian legislation. The principle of territoriality also applies to foreign vessels that are involved in committing human smuggling crimes within Indonesian waters.³⁹

The problem of human smuggling in Indonesia is becoming increasingly serious. Initially, illegal immigrants caught by security forces at the country's borders were typically heading to Australia, with Indonesia serving merely as a transit country. However, Indonesia is now becoming the primary destination for these migrants. This shift has prompted cooperation between the Indonesian and Australian governments to address the issue of human smuggling in both countries. Despite this cooperation, the legal provisions governing human smuggling remain limited. Currently, the issue is addressed only in several articles of Law Number 15 of 2009, Law Number 6 of 2011, and Government Regulation Number 31 of 2013. These regulations primarily focus on prosecuting the perpetrators of migrant smuggling, while leaving migrants, the victims of smuggling, without legal protection or avenues for prosecution.⁴⁰

According to the Central Task Force for People Smuggling of the Indonesian National Police,⁴¹ the modus operandi of people smuggling includes the following: Immigrants enter Indonesia legally via air travel by utilizing a visa on arrival; they enter Indonesia through the waterways in the Riau Islands and continue their journey to other parts of Indonesia via domestic flights; they enter Indonesia by land at the Indonesia-Malaysia border in West Kalimantan;⁴² they eliminate all immigration documents to facilitate obtaining a UNHCR card; they pay human trafficking syndicates to be illegally dispatched to the destination country; they recruit minors as crew members on boats carrying illegal migrants; illegal migrants live with asylum seekers and refugees in shelters organized by IOM and UNHCR in Indonesia; and smugglers organize the illegal departure of migrants by recruiting local individuals as part of their network syndicates.⁴³

³⁹ International Organization for Migration., *Petunjuk operasional penanganan tindak pidana penyelundupan manusia: pencegahan, penyidikan, penuntutan dan koordinasi di Indonesia 2012* International Organization for Migration (International Organization for Migration, 2012), page.15.

⁴⁰ Kurnia, Asep., *Petunjuk Penanganan Tindak Pidana Penyelundupan Manusia: Pencegatan, Penyidikan, Penuntutan, dan Koordinasi di Indonesia*, Jakarta, International Organization for Migration, 2012, page.112.

⁴¹ CMIS PS Satgas Bareskrim Mabes Polri., *Penanganan penyelundupan Manusia di Indonesia*, Report of criminal investigation bureau, Jakarta: Indonesian Police Headquarters-Jakarta, 2012, page.9.

⁴² Antje Missbach, and Wayne Palmer., *Facilitated but unauthorised return: the role of smugglers in return migration and clandestine border crossings between Malaysia and Indonesia*, *Journal of Ethnic and Migration Studies*, Vol.50, no.10, 2024, page.2655.

⁴³ CMIS PS Satgas Bareskrim Mabes Polri., *Penanganan penyelundupan Manusia di Indonesia*, Report of criminal investigation bureau. Jakarta: Indonesian Police Headquarters-Jakarta, 2012, page.10.

3.3. Reinforcing Law Enforcement in Combating People Smuggling Crimes

Efforts and policies aimed at preventing and controlling crime fall under the domain of criminal policy. This field of criminal policy is inherently connected to the broader concept of social policy, which encompasses both social welfare policy and social defense policy. Therefore, crime prevention policies, as part of criminal policy, are implemented through penal means (i.e., criminal law). As such, penal policy, particularly at the judicial and applicative stages (criminal law enforcement *in concerto*), must align with and seek to achieve the broader objectives of social policy, namely social welfare and social defense.

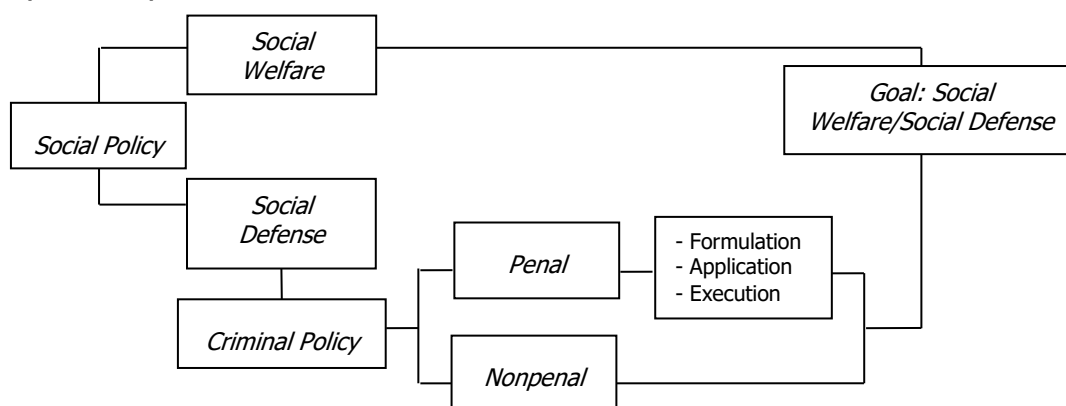


Figure 1. Policy scheme⁴⁴

Based on Figure 1, crime prevention and control should support the objectives of social welfare and social defense. A crucial component of both social welfare and social defense is the immaterial aspect of community welfare and protection, particularly the values of trust, truth, honesty, and justice. Crime prevention and control must be approached integrally, balancing penal and non-penal methods. From the perspective of criminal policy, the most strategic approach is through non-penal means, as they are more preventive in nature. Penal policies, in contrast, have inherent limitations and weaknesses, including being fragmentary, simplistic, and not functionally structural; symptomatic rather than causative or eliminative; individualistic or offender-oriented instead of victim-oriented; more repressive than preventive; and requiring significant infrastructure at high costs. Crime prevention and control through penal means is referred to as penal policy or penal law enforcement policy, which is operationalized through several stages: the formulation stage (legislative policy), the application stage (judicial policy), and the execution stage (executive/administrative policy).

The formulation stage indicates that efforts to prevent and address crime are not solely the responsibility of law enforcement officials, but also that of lawmakers (legislative officials). Legislative policy, in fact, represents the most strategic stage of penal policy. Therefore, errors or weaknesses in legislative policy are strategic missteps that can hinder crime prevention and control efforts at both the application and execution stages. One example highlighted in this research is the absence of a specific law addressing the eradication of human smuggling crimes.

⁴⁴ Barda Nawawi Arief., *Problems of Law Enforcement and Criminal Law Policy in Crime Control*, Fourth Print, Jakarta, Kencana, 2014, page.78.

As a result, law enforcement officials can only apply the provisions outlined in Law Number 6 of 2011 to prosecute those involved in human smuggling activities.

The first is Penal Policy. According to international agreements, such as those made at the UN Congress on the Prevention of Crime and the Treatment of Offenders, the fundamental strategy for crime prevention should focus on eliminating the underlying causes and conditions that contribute to criminal behavior. Therefore, the strategic policy for addressing human smuggling crimes should be comprehensive, preventive, and eliminative, targeting the root causes. In other words, the strategic policy should focus on counteracting the factors that lead to the crime.⁴⁵ This is an aspect often lacking in “penal” policies, which tend to be partial, repressive, and symptomatic rather than addressing the underlying causes of criminal behavior. Although penal policy is primarily repressive in nature, it also contains a preventive element. The threat and imposition of punishment for offenses, such as human smuggling, are intended to have a deterrent effect. Moreover, penal policy remains a necessary component of crime prevention, as criminal law serves as a tool within social policy to express social disapproval or social abhorrence. This is also expected to function as a means of social protection (social defense). Therefore, it is often stated that penal policy is an integral part of social defense policy.⁴⁶ In this context, social disapproval or condemnation of certain acts, including human smuggling, is expressed through the formulation of offenses. Therefore, from the perspective of criminal law policy, efforts to address human smuggling crimes begin with the policy of defining and criminalizing specific acts as human smuggling offenses.⁴⁷ This criminalization policy is highly dependent on the conceptual understanding and criteria of what constitutes a human smuggling crime.

The second is non-penal policy. Non-penal policies implemented by the Government of Indonesia in addressing human smuggling crimes include conducting international cooperation, particularly with neighboring countries in the ASEAN region, and engaging in regional cooperation, such as the Bali Process. The Indonesian government has continued its efforts to address irregular migration, particularly human smuggling and trafficking, through various bilateral, regional, and multilateral mechanisms. At the regional level, the Regional Consultative Process (RCP) on People Smuggling, Trafficking in Persons, and Related Transnational Crime, commonly known as the Bali Process, was initiated by Indonesia in 2002. This process is co-chaired by Indonesia and Australia and aims to develop joint solutions to the problem of irregular migration in the region. Activities carried out under the Bali Process include capacity building, data and information exchange, the sharing of best practices, and technical cooperation in

⁴⁵ Rose Broad, and Nick Turnbull., From human trafficking to modern slavery: The development of anti-trafficking policy in the UK, *European Journal on Criminal Policy and Research*, Vol.25, no.4, 2019, page.127; See too, Levi, Michael, and Mike Maguire., Reducing and preventing organised crime: An evidence-based critique, *Crime, Law and Social Change*, Vol.41, no.6, 2004, page.437; See too, Shahrzad Fouladvand, and Tony Ward., Human trafficking, vulnerability and the state, *The Journal of Criminal Law*, Vol.83, no.1, 2019, page.48.

⁴⁶ Barda Nawawi Arief., *Problems of Law Enforcement and Criminal Law Policy in Crime Control*, Fourth Print, Jakarta, Kencana, 2014, page.181.

⁴⁷ Valsamis Mitsilegas., The normative foundations of the criminalization of human smuggling: exploring the fault lines between European and international law, *New Journal of European Criminal Law*, Vol.10, no.1, 2019, page.73.

the field of immigration.⁴⁸

Since its inception in 2002, the resolution of human smuggling cases has been supported by the Bali Process, an initiative agreed upon by regional countries. The Bali Process Ministerial Meeting serves as a key form of regional cooperation that has effectively raised awareness about the consequences of human smuggling, trafficking in persons, and related transnational crimes. It has also facilitated the development of strategies that are implemented through practical cooperation. The forum includes more than 45 members, such as the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and the United Nations Office on Drugs and Crime (UNODC), as well as a number of observer countries and international agencies, all of whom participate voluntarily.⁴⁹

The objectives of the Bali Process focus on enhancing regional efforts to combat human smuggling and trafficking. Key aims include the development of more effective mechanisms for sharing information and intelligence, which improves cooperation among regional law enforcement agencies to deter and dismantle smuggling and trafficking networks.⁵⁰ Additionally, the Bali Process seeks to strengthen cooperation on border and visa systems to better detect and prevent illegal movements. It also aims to increase public awareness to discourage these activities and to warn potential victims. Another critical objective is to enhance the effectiveness of return strategies by establishing appropriate arrangements and cooperation in verifying the identity and nationality of illegal migrants and trafficking victims.

Further goals of the Bali Process include the enactment of national legislation that criminalizes people smuggling and trafficking, as well as providing appropriate protection and assistance to victims, particularly women and children. The initiative also places a strong emphasis on addressing the root causes of illegal migration by expanding opportunities for legal migration and assisting countries in adopting best practices in asylum management, in alignment with the Refugee Convention.⁵¹ Finally, the Bali Process seeks to advance the implementation of an inclusive, non-binding regional cooperation framework that allows interested parties to cooperate more effectively in reducing irregular migration across the region.⁵²

The Ministerial Conference on People Smuggling, Trafficking in Persons, and Related Transnational Crime (BRMC IV) emphasized strengthening the

⁴⁸ Kementerian Luar Negeri Republik Indonesia., *Diplomasi Indonesia 2011*, Jakarta, Kementerian Luar Negeri Republik Indonesia, page.211.

⁴⁹ The Bali Process. *People smuggling*. (2024, August 13); See too, Wagiman., *Hukum Pengungsi Internasional* (1st ed.), Yogyakarta, Sinar Grafika, 2021, page.105.

⁵⁰ Sébastien Moretti., Contested regionalism in the Asia-Pacific: the case of the Bali Process and the protection of refugees, *Journal of Ethnic and Migration Studies*, Vol.48, no.12, 2022, page.2863.

⁵¹ Melissa Curley and Kahlia Vandyk., The securitisation of migrant smuggling in Australia and its consequences for the Bali Process, *Australian Journal of International Affairs*, Vol.71, no.1, 2017, page.52.

⁵² Sébastien Moretti., Contested regionalism in the Asia-Pacific: the case of the Bali Process and the protection of refugees, *Journal of Ethnic and Migration Studies*, Vol.48, no.12, 2022, page.2863.

commitment of Bali Process countries to tackling irregular migration in the region and agreed to continue the Ad Hoc Group mechanism. Additionally, the conference highlighted the importance of enhancing cooperation in combating trafficking in persons, with a focus on a victim-centered approach. BRMC IV also made significant progress by agreeing to establish an inclusive, non-binding Regional Cooperation Framework (RCF), aimed at improving cooperation among countries to reduce irregular movements in the region. The RCF is based on five main principles: the criminalization of human smuggling, a consistent mechanism for determining the status of irregular migrants, repatriation and resettlement options, voluntary return to the country of origin, and enhanced cooperation on border security.

As a follow-up to the BRMC, Steering Group and Ad Hoc Group meetings were held, with the primary agenda focusing on the operationalization of the Regional Cooperation Framework (RCF). Both meetings agreed on the establishment of a Regional Support Office (RSO) as the first step in implementing the RCF. The RSO is recommended with the following objectives: (1) facilitating the operationalization of the RCF and strengthening practical cooperation related to refugee protection and international migration, including human smuggling and trafficking; and (2) supporting border management and migration management efforts within the Asia-Pacific region.

The RSO will serve as the focal point for several key functions: (1) information exchange on refugee protection and international migration; (2) capacity building and exchange of best practices; (3) pooling technical resources; and (4) providing logistical, administrative, operational, and coordination support for joint activities. The RSO will operate under the direction and control of the Co-Chairs, in consultation with the UNHCR and IOM. Operational guidelines will be established by the Co-Chairs, in consultation with the Steering Group. The RSO Office was subsequently established to facilitate the implementation of the RCF. The Office provides a central point for sharing between the Union on refugee protection and international migration information; capacity building and exchange of best practices; pooling of common technical resources; and providing logistics, administration, operational support and coordination for joint projects among Bali Process members. The Regional Support Office was officially opened in Bangkok on September 10, 2012.⁵³

The policies implemented by the Directorate General of Immigration of the Ministry of Law and Human Rights are as follows: The Directorate General does not apply immigration administrative measures to victims of human smuggling. Victims of human smuggling present in Indonesian territory are placed in the Immigration Detention Center or other designated facilities, where they receive special treatment that differentiates them from other detainees.⁵⁴

The Directorate General of Immigration enforces several policies to combat human smuggling, focusing on both preventive and repressive measures. One key policy is the immediate return of foreign national victims of human smuggling to their

⁵³ The Bali Process., *People smuggling* (2024, August 13), Retrieved October 11, 2024.

⁵⁴ Detention refers to a foreign national residing in an Immigration Detention House or Immigration Detention Room who has received a detention decision from an Immigration Officer (Article 1, Number 35 of Law No. 6 of 2011).

country of origin, providing them with travel documents if necessary. Preventive efforts include exchanging information with other countries and relevant domestic agencies, sharing details about modus operandi, travel document security, and the detection of counterfeit documents. Technical cooperation and training with other nations also play a critical role, ensuring humane treatment of victims and improving the security of travel documents. Public awareness campaigns are conducted to inform citizens that human smuggling is a criminal offense, while efforts are made to guarantee the integrity and quality of travel documents to prevent misuse or forgery. Repressive measures focus on investigating and prosecuting perpetrators of human smuggling crimes. Immigration authorities conduct thorough investigations and administrative actions against offenders, and they cooperate with other law enforcement agencies in these efforts. By ensuring that travel or identity documents meet high standards of security, the Directorate General of Immigration aims to prevent illegal activities related to human smuggling. These comprehensive measures combine proactive information exchange, legal counseling, and rigorous law enforcement to effectively combat human smuggling and protect vulnerable individuals.

The findings of this study reveal that effective criminal law policies to combat human smuggling hinge on a balanced approach between penal and non-penal measures, as well as a strong adherence to territorial sovereignty and international cooperation. Previous studies have shown that states like Indonesia, which adopt the principle of territoriality in their criminal law application, ensure that their sovereignty is upheld within their borders while also respecting the legal frameworks of neighboring countries.⁵⁵ Research highlights the importance of international agreements, such as the Bali Process, which encourages regional cooperation on combating human smuggling by facilitating information exchange, building enforcement capacity, and harmonizing legal approaches.⁵⁶ The incorporation of both legislative action and judicial policies can significantly improve the prevention of human smuggling, ensuring that individuals within the state's territory, regardless of nationality, are subject to national laws.⁵⁷ The research suggests that when states enforce these policies effectively, the legal tools to combat human smuggling become more robust and deterrent-focused.⁵⁸

Furthermore, the findings emphasize that while penal policies, including criminal

⁵⁵ Arie Afriansyah, Aristyo Rizka Darmawan, and Andreas Pramudianto., Enforcing Law in Undelimited Maritime Areas: Indonesian Border Experience, *The International Journal of Marine and Coastal Law*, Vol.37, no.2, 2022, page.291; See too, Ridwan Arifin, Rodyah Rodyah, Waspiah Waspiah, Asyaffa Ridzqi Amandha, Elizabeth Yunita Krisnawati, Tirta Sandi, and Michael Timothy Napitupulu., The Direction of Indonesia's Legal Policy on the ASEAN Mutual Legal Assistance Treaty in Criminal Matters: A Path to Law Reform in Cross-Border Crime Enforcement in Southeast Asia, *Journal of Law and Legal Reform*, Vol.5, no.2, 2024, page.767.

⁵⁶ Masitoh Indriani and Amira Paripurna., Biometric Data Sharing in Addressing Irregular Migration and Security Issues within the Bali Process Framework for Indonesia and ASEAN Member States, *Journal of Southeast Asian Human Rights*, Vol.4, no.3, 2020, page.449.

⁵⁷ Shinta Hadiyantina., The handling of people smuggling involving foreign nationals as efforts to safeguard Indonesian territories, *International Journal of Diplomacy and Economy*, Vol.6, no.1, 2020, page.95; See too, Ilse Van Liempt, and Stephanie Sersli., State responses and migrant experiences with human smuggling: A reality check, *Antipode*, Vol.45, no.4, 2013, page.1033.

⁵⁸ Herbin Marulak Siahaan., Law Enforcement in The Handling of People Smuggling Crime in Indonesia, *Law Reform*, Vol.16, no.2, 2020, page.173.

prosecution and punishment, serve as deterrents, a more comprehensive approach is needed to address the root causes of human smuggling. Research highlights the critical role of non-penal measures such as public awareness campaigns, victim protection, and international cooperation in reducing smuggling activities.⁵⁹ The lack of a specialized legal framework targeting human smuggling in Indonesia, as identified in the research, further underscores the need for more nuanced and specific legislation that can more effectively address the evolving dynamics of human smuggling.⁶⁰ By integrating both punitive and preventive measures, criminal law policies can mitigate the crime's prevalence and protect victims more effectively, while ensuring that enforcement mechanisms are both humane and internationally coordinated.⁶¹

4. Conclusion

The findings of this study reveal that the Government of Indonesia has adopted a comprehensive approach to combating human smuggling, combining both penal and non-penal measures. The penal policies focus on the investigation, prosecution, trial, and punishment of those involved in human smuggling, based on the Criminal Code, the Criminal Procedure Code, and Law Number 6 of 2011. These legal provisions ensure that offenders are held accountable and serve as a deterrent to potential perpetrators. Indonesia's law enforcement efforts are well-coordinated and not only focus on punishing offenders but also on preventing further involvement in such crimes through proactive deterrence.

In addition, Indonesia actively collaborates with other countries to strengthen the capacity of law enforcement agencies. This cooperation facilitates the detection, prevention, and disruption of human smuggling networks, as well as the protection of victims. Indonesia has also reinforced its international partnerships, particularly through frameworks such as the Bali Process and in cooperation with global institutions like the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR). These partnerships enhance information sharing and coordination in the fight against human smuggling. As a signatory to the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, which supplements the United Nations Convention Against Transnational Organized Crime (UNTOC), Indonesia remains committed to global efforts to combat human smuggling, underscoring its active role in international crime prevention and migration governance.

⁵⁹ Eamon Aloyo, and Eugenio Cusumano., Morally evaluating human smuggling: the case of migration to Europe, *Critical Review of International Social and Political Philosophy*, Vol.35, no.2, 2021, page.127; See too, Antje Missbach, and Wayne Palmer., People smuggling by a different name: Australia's 'turnbacks' of asylum seekers to Indonesia, *Australian journal of international affairs*, Vol.74, no.2, 2020, page.191.

⁶⁰ Farhana., *Aspek Hukum Perdagangan Orang di Indonesia*, Yogyakarta, Sinar Grafika, 2010, page.122; See too, Farhana Farhana., Responsive legal approach to law of human trafficking in Indonesia, *Journal of social studies education research*, Vol.9, no.1, 2018, page.219.

⁶¹ Valsamis Mitsilegas., The normative foundations of the criminalization of human smuggling: exploring the fault lines between European and international law, *New Journal of European Criminal Law*, Vol.10, no.1, 2019, page.73; See too, Sébastien Moretti., Contested regionalism in the Asia-Pacific: the case of the Bali Process and the protection of refugees, *Journal of Ethnic and Migration Studies*, Vol.48, no.12, 2022, page.2866.

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