

LEGAL SUBSTANTIATION IN THE CRIME OF PEOPLE SMUGGLING BASED ON INDONESIAN IMMIGRATION LAW: A CASE STUDY OF MAIL ORDER BRIDES

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Abstract - People smuggling with the mode of mail order brides is a crime opportunity for Chinese men to bring Indonesian women to China. Indonesian women are persuaded tens of millions of rupiah in the form of dowry to be married to Chinese men as a guarantee that when married Indonesian women will be treated like a married couple. But allegedly when they were in China, Indonesian women were not treated like a wife as they should be. Indonesian women are forced to work and even tortured if they do not follow the wishes of the Chinese husband. The formulation of the problem examined in this study is how to prove the elements of Article 120 paragraph (1) of Law Number 6 of 2011 concerning Immigration in the SDD case and what obstacles are experienced in proving cases of people smuggling with the mode of mail order brides. The research method used is empirical normative research by interviewing sources and collecting literature materials related to this research. From the results of the research, it can be seen that SDD's actions have fulfilled the elements of Article 120 paragraph (1) of the Immigration Law. However, immigration investigators public prosecutor have difficulty in applying and proving this article because there is a mode of mail order brides in mixed marriages involving two different nationalities.

Keywords: Legal Substantiation; People Smuggling; Immigration Law; Mail Order Brides

INTRODUCTION

People smuggling is one of the most transnational organized crimes currently committed by Chinese men.[1] Through these crimes, they tried to smuggle Indonesian women into China.[2] One of the consequences of people smuggling is that Indonesian women get violent treatment and even harassment while in China.[3] Transnational migration according to M. Iman Santoso is:[4]

Human migration individually or in groups of various levels and always accompanied by various aspects of life, which continues to move from one region of the country to another, either to stay temporarily or permanently and is multidimensional with various impacts as a strategy in order to find better life opportunities.

The increasing thinking of people towards science both in technology, information, transportation, communication and human living standards has encouraged the development of the world economy which causes cross-country travel to become a common need.[5] With the support of increasingly sophisticated transportation facilities, making the mobility of people between countries increasing, thus giving a picture as if national borders are only imaginary.[6]

Migration regulations already exist to regulate people entering or leaving the territory of a country.[7] In Indonesia, immigration institutions are managed by the Directorate General of Immigration under the Ministry of Law and Human Rights as stipulated in Law Number 6 of 2011 concerning Immigration.[8] Immigration is a matter of traffic of people entering or leaving Indonesian territory and its supervision in the context of upholding state sovereignty.¹ The Directorate General of Immigration (DGI) as the bearer of the mandate of the Immigration Law, carries out part of government affairs in providing immigration functions, namely immigration services, law enforcement, state security, and facilitators of community welfare development.² From this function, DGI is responsible for everyone who enters or leaves Indonesian territory.[9]

Implementation of immigration functions related to law enforcement functions, DGI is authorized to

¹ Article 1 number 1 of the Immigration Law

² Article 1 number 3 of the Immigration Law

provide sanctions or penalties if there are immigration violations committed, both by Indonesian citizens and foreigners.[10] One example is the practice of mail order bride that often occur between Indonesian women and Chinese men through the role of matchmaking agents.[11] This practice later developed into a criminal act of people smuggling because Indonesian women who marry Chinese men actually become victims of violence and are even forced to work when they arrive in China.[12]

People do not know the characteristics and dangers of people smuggling that make people easy to become victims[13], and increasingly heavy lifestyles due to the influence of globalization are also factors causing the increase in people smuggling cases.[14] The lack of education of Indonesian women (victims) and lack of information on foreign grooms are loopholes for this people smuggling crime. The role of the victim's parents cannot be separated from the case of this mail order bride to marry their child to a foreign man.[15] One example, when the bride still refuses, at that time the role of parents is very important to force the bride-to-be with the excuse of obeying and filial piety to parents. This is because parents want to be free from poverty and have a better life.[12] Finally, the bride-to-be will follow what her parents tell her to do. Article 120 of the Immigration Law states that:

(1) People smuggling is an act aimed at seeking profit, either directly or indirectly, for oneself or for another person who brings a person or group of people, either organized or unorganized, or orders others to bring a person or group of people, whether organized or unorganized, who do not have the legal right to enter Indonesian territory or exit Indonesian territory and/or enter territory of another country where the person does not have the right to lawfully enter the territory, either by using valid or false documents, or without the use of travel documents, whether through immigration checks or not. The penalty for people smuggling is punishable by imprisonment for a minimum of five years and a maximum of fifteen years and a fine of at least IDR 500.000.000 and a maximum of IDR 1.500.000.000.

(2) Attempts to commit the crime of people smuggling are punishable with the same crime as referred to in paragraph (1).

Immigration law enforcement in cases of people smuggling, intelligence and responsible enforcement in order to enforce Immigration law.[16] The field of immigration intelligence and enforcement has the task of carrying out the preparation of the implementation, supervision, intelligence and enforcement of Immigration.[17] Then the immigration intelligence section has the task of preparing plans, implementing, coordinating, evaluating and reporting in the field of immigration supervision, immigration intelligence cooperation, immigration intelligence investigation, presentation of intelligence product information, personnel security, immigration documents, permits, offices, and immigration vital installations. The immigration enforcement section has the task of preparing plans, implementing, coordinating, evaluating and reporting in the field of immigration criminal investigation, immigration administrative actions, and repatriation of foreigners.[18]

Mail order bride become a crime opportunity for Chinese men to smuggle Indonesian women in China.[19] Indonesian women are lured tens of millions of rupiah as dowry to be married to Chinese men, with the guarantee that when married Indonesian women will be treated like a married couple.[2] But in practice when they are in China, Indonesian women are not treated like wives as they should be. Indonesian women are forced to work and even tortured, if they do not follow the wishes of the Chinese man. Such as the case that occurred at the Bandung Immigration Office which was carried out by Chinese citizens on behalf of SDD who carried out the mode of matchmaking for Tiogkok men who would be betrothed to Indonesian women. It is suspected that the action was an attempt to smuggle Indonesian women to be brought to China.

On Thursday, March 26, 2020, the Bandung Bale District Court convicted SDD defendants guilty of violating Article 120 paragraph (1) of the Immigration Law. The Chief Judge sentenced the defendant to five years imprisonment and a fine of IDR 500.000.000 subsidiary to three months imprisonment if the defendant could not pay the fine as decided by the court.

This incident is the first case that DGI has successfully proven, especially at the Bandung Immigration Office. This is because many similar cases cannot fulfill all elements of articles in immigration crimes contained in Article 120 paragraph (1) of the Immigration Law which regulates people smuggling. From a legal aspect, the criminal act of people smuggling has similar elements both from the perpetrators, acts, methods, objectives and events with Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons. Mail order brides are currently charged with trafficking because the evidentiary elements are considered easier to prove than people smuggling. This has an impact on the success of DGI in carrying out the function of immigration law enforcement, besides that it can

raise questions from the public to the DGI in maintaining the upholding of state sovereignty.

These legal and social facts are the reason for this research. The author would like to explain the efforts and obstacles faced by the Bandung Immigration Office in resolving the case of mail order bride using Article 120 paragraph (1) of the Immigration Law which regulates people smuggling so that it can be useful for other Immigration Offices in Indonesia when encountering cases of mail order bride. Based on the background described above, the formulation of the problem studied in this study is (1) How are efforts to prove the elements of Article 120 paragraph (1) of the Immigration Law related to people smuggling in SDD cases? (2) Why is it difficult to prove the elements of Article 120 paragraph (1) of the Immigration Law related to people smuggling?

METHOD

This study uses normative and empirical legal research methods by using primary data sources in tracing and collecting materials from interviews directly related to this study and using secondary data in collecting data obtained through literature materials.[20]The process of finding legal doctrines, rules, and principles to address the current legal questions is known as legal research. In this study, the author employs three approaches to legal analysis: statutory, legal source, and conceptual. The latter involves researching legal ideas including legal sources, legal functions, and legal institutions.[21]

PROVING THE CRIMINAL ELEMENT OF PEOPLE SMUGGLING BASED ON ARTICLE 120 PARAGRAPH (1) OF THE IMMIGRATION LAW: A CASE STUDY OF SDD

1. Position Case³

This case began when SDD extended the visit stay permit at the Bandung Immigration Office in April 2019, the officer in the field of immigration status was suspicious of four Chinese nationals living at the same address. The address belongs to the settlement area and there has never been a Chinese citizen living there. The immigration status field coordinates with the intelligence and immigration enforcement field to conduct surveillance to the address and find several documents leading to marriage. From these findings, a formal and material examination of the SDD application file was carried out and minutes of examination were carried out to obtain further information.

The chronology of events based on Case Number 838/Pid.Sus/2019/PN Blb and from the results of SDD's examination with witnesses. It is known that around March 2019 at that time SDD did not have a job in China so that it was economically difficult to support his wife who was an Indonesian citizen named EM. SDD told his wife EM to jointly run an illegal matchmaking business by accepting the services of Chinese men to find Indonesian women wives in exchange for a sum of money.

SDD has been married to EM and settled in China since December 1, 2018. The idea of running an illegal matchmaking business came about because SDD's experience when he married EM using a placement agency by paying 12.500 RMB/Yuan (IDR 25.000.000) to find a woman as a wife and SDD succeeded in bringing EM to settle in China. Furthermore, because of the huge profits, EM then agreed to SDD's request for the illegal business by saying it would look for Indonesian women and arrange marriage documents in Indonesia, while SDD looked for Chinese men who were looking for Indonesian women to bring to China.

SDD received orders from Chinese nationals ZF and CS who were looking for future wives from Indonesia. The reason ZF and CS look for Indonesian women is because they are kind and friendly, while women from China demand a lot of economy and tend to be arrogant. In addition, they assess that if married in Indonesia with a woman from Indonesia, the cost of marriage is cheaper than the cost of marriage in China. SDD asked ZF's family for 70.000 RMB/Yuan and promised to find a future Indonesian wife for ZF as they wished, then said they could get complete and official documents. After marriage, Indonesian women want to live and settle in China. After an agreement between SDD and ZF, on April 19, 2019, SDD, EM, and ZF departed for Indonesia through Beijing airport, China. They entered Indonesia through Soekarno Hatta Airport. SDD and ZF use Chinese Passport with Visa on Arrival and EM enter Indonesia using Indonesian Passport. Arriving at Soekarno Hatta Airport, they were picked up to be delivered to The Edge Apartment in the Baros area of Cimahi City while waiting for Indonesian women who were suitable for ZF.

EM found several women and there were two women that EM had offered to ZF but did not match. As the matchmaking attempt was unsuccessful, EM asked the SDD to return to China. But SDD was

³ The case description is summarized from the Decision of the Bale Bandung District Court Number 838/Pid.Sus/2019/PN Blb

reluctant to return to China before ZF married an Indonesian woman. In addition to not having the cost to return to China, SDD has also not benefited from the money earned from ZF because it has not been successfully married. Later, EM rediscovered the woman through brother Y and found a woman who was willing to marry, namely SR. EM tells SDD that there are already women willing to marry ZF. SR is an Indonesian citizen with the status of a widow. His last educational background was in junior high school and he had no Chinese language skills.

Then SDD told ZF that there was a willing Indonesian woman, SR. SDD asked ZF to give dowry to SR's family and convert to Islam first. SDD then asked ZF for 50.000 RMB/Yuan. But because ZF did not have this amount of money, ZF asked his family in China and the family gave the money to SDD gradually for a total amount of 62.000 RMB/Yuan through the WeChat application and the Agricultural Bank of China. ZF's family sent proof of remittance to SDD and the proof of remittance was stored on ZF's mobile phone. Remittance details are as follows:

- a. On April 30, 2019 at 14:40 China time transferred 35.000 RMB/Yuan;
- b. On May 03, 2019 at 23:31 China time transferred 15.000 RMB/Yuan;
- c. On June 30, 2019 at 15:11 China time transferred 5.000 RMB/Yuan;
- d. 2.000 RMB/Yuan and 5.000 RMB/Yuan via WeChat app (proof of delivery is not provided ZF), so the total of all money is 62.000 RMB/Yuan;

After receiving remittances from ZF's family, SDD gave approximately 50.000 RMB/Yuan (IDR 100.000.000) to BNI Bank accounts in EM's name, then in the name of SK (EM's sister-in-law), and to accounts in the name of SN (EM's mother). The purpose of SDD and EM transferring to multiple beneficiary accounts is so as not to arouse suspicion in incoming and outgoing money turnover transactions.

On April 29, 2019, EM met SR to show him a photo of ZF. EM asked SR to communicate with ZF via the WeChat app. In the WeChat application, there is a language translation so that SF and ZF can communicate well because SR cannot speak Chinese and ZF cannot speak Indonesian. After the two communicated, EM took SR to The Edge Apartment to meet ZF and both were photographed by EM to be sent to ZF's family in China.

After the meeting, EM persuades O, SR's parent, to marry SR to ZF. EM offers a dowry of IDR 30.000.000 with details for wedding expenses, will be given IDR 10.000.000 and borne by EM and the remaining IDR 20.000.000 will be given to SR after completing the marriage certificate and will leave for China. The offer made SF and O believe and want to marry ZF even though they had never known each other before.

On April 30, 2019 SDD, EM, ZF, SR and O went to the Central Cimahi Religious Affairs Office to meet with the Head of the Religious Affairs Office named ER to convert ZF and ask to marry ZF and SR after the conversion was over. ER then Islamized ZF using translation through google translate and guided ZF to recite two sentences of shahada witnessed by SDD, EM, SR, and O. After the Islamization was completed, a recording was carried out in the Islamic entry register book Number: B9/Kua.10.24.2/BA.04/1/2019. Initially, ER had refused to marry ZF to SR because the marriage license from the Chinese Embassy had not yet been issued. However, after O gave IDR 800.000, ER finally agreed to attend and marry, provided that all documents related to the marriage were kept by ER as the Head of the Central Cimahi Religious Affairs Office. At that time and the marriage certificate citation book could not be issued before there was a marriage license from the Chinese embassy. Before marrying ZF to SR, SDD made a statement letter stating that SR was willing to go to China and live with ZF, if he was not willing then SR had to pay compensation that had been incurred by ZF. The affidavit was signed by SR on May 3, 2019 and kept by EM.

On May 4, 2019, at the mosque near SR's house, there was a state and religious invalid marriage between SR and ZF. The wedding took place briefly and when the contract was made to exchange rings. Because the marriage was invalid and without a marriage license from China, the marriage certificate book citation was not issued by the Central Cimahi Religious Affairs Office. On May 10, 2019, SDD ordered ZF to temporarily return to China to take care of the required documents. After completion, SDD asked ZF to return to Indonesia.

Furthermore, on May 31, 2019, SDD ordered ZF to return to Indonesia via Guangzhou airport, China. At the airport, there is already CS who also wants to marry Indonesian women and JS who works with SDD while in China to find Chinese men who will marry Indonesian women. ZF, CS and JS enter Indonesia through Soekarno-Hatta Airport using Visa on Arrival. Arriving at Soekarno-Hatta Airport,

they were picked up by SDD and EM to be delivered to The Edge Apartment in the Baros area of Cimahi City.

JS received a request from CS's family in China to find an Indonesian woman who would marry CS. After getting the order, JS gave a price of 70.000 RMB/Yuan to the CS family. The price does not include ticket prices and living costs while CS and JS are in Indonesia. Furthermore, CS's family gave CS approximately 50.000 RMB/Yuan and CS directly gave the money to JS gradually through the WeChat application. Then JS gave 40.000 RMB/Yuan gradually to SDD through the WeChat application and JS kept the remaining 10.000 RMB/Yuan. In addition to money from JS, SDD also asked CS for 5.000 RMB/Yuan when CS arrived in Indonesia. CS's family trusts JS because JS has been to Indonesia before and assures CS of his safety when he is with him in Indonesia.

Just like before, SDD ordered EM to find Indonesian women to be betrothed to CS and found some women but did not meet the criteria desired by CS. Then EM looked back and introduced N alias H alias A to CS. EM asked CS to communicate with N aka H aka A through the WeChat app. In the WeChat application, there is a language translation so that CS and N alias H alias A can communicate well because N alias H alias A cannot speak Chinese and CS cannot speak Indonesian. After the two communicated and felt suitable, EM persuaded N alias H alias A that if married, he would be promised a dowry of IDR 35.000.000 which would be given before the wedding of IDR 15.000.000 and the rest would be given when all the documents were completed and when the witness arrived in China.

On June 6, 2019, EM made a statement letter which was then submitted to be filled out and signed by N alias H alias A. The statement letter imitated from the SR statement letter, the letter was made the same as SR with the aim of avoiding any demands from the woman, if it turns out that the woman cancels her marriage, then she must return the money that has been given by the man to the woman and after marriage the Indonesian woman must participate with husband to China.

Furthermore, on June 10, 2019 SDD, EM, CS, JS and N alias H alias A visited Darus Surus Ali Azhari/Khodijah Islamic Boarding School for Islamic boarding and marriage of CS and N alias H alias A by Kyai J as the Leader of Darus Surus Ali Islamic Boarding School. After Kyai J Islamized CS by saying two sentences of shahadah, it was followed by the kabulijab process between CS and N alias H alias A with a dowry of IDR 35.000.000 and a pair of gold rings. Kyai J was given a salary for Islamizing and marrying by SDD and EM of IDR 300.000.

CS's marriage was not held at the Cimahi Religious Affairs Office because it rejected the marriage between N alias H alias A and CS. K Cimahi Religious Affairs Office reasoned that N alias H alias A did not have an identity card, Family Card, and Birth Certificate in N's name. Because the marriage was performed illegally both religiously and state-wide, the marriage certificate does not exist. The marriage certificate is required as a condition that N alias H alias A is the wife of CS so that she can go to China with married status. Furthermore, SDD ordered EM with N alias H alias A to leave for Batam by ship and meet someone (broker) acquaintance from N alias H alias A with the aim of making a marriage book.

The plan is that through these brokers N alias H alias A and CS will be remarried at KUA Batam Centre, provided that both come to Batam and provide requirements in the form of documents and CS identity, while the requirements for N alias H alias A are KTP, KK, Birth Certificate, Parents' Marriage Book, permission letter from parents and unmarried status letter. To be able to depart outside the territory of Indonesia N alias H alias A requires a passport with the identity of N. However, because in 2006 N alias H alias A already had a passport with the name H, so to make a new passport with the name N must first undergo the process of revoking the file at the Batam Immigration Office and finally N alias H alias A uses data in accordance with his old passport, namely H, whereas the real name is N.

Furthermore, because the Batam Immigration Office had issued a passport in H's name, the SDD ordered EM to carry out a remarriage at the Batam Centre Religious Affairs Office between N alias H alias A and CS. The purpose of the remarriage was to change the identity of the name from N to H (according to the passport from Batam). However, the remarriage in Batam was postponed because CS could not leave Bandung because his stay permit was being extended at the Bandung Immigration office.

Furthermore, CS's family in China was suspicious of SDD because CS's parents felt blackmailed. This is because SDD always orders CS to notify families in China to send money to SDD. Under pressure from the SDD, CS's parents no longer sent CS money for the wedding expenses and asked for the wedding to be cancelled. CS's family received news that there was a case of smuggling women into China, so CS's

parents asked SDD to cancel the serial marriage on the grounds that CS's parents did not want problems bringing foreigners to their country. Hearing CS's family's words, SDD ordered EM to take N alias H alias A to live in EM's house, while CS lived in the Lotus Valley rented house with JS so that after the serial marriage process, N alias H alias A did not feel like CS's wife.

2. Proving the Elements of Guilt in People Smuggling Crime Articles

Proof is a process of how the evidence is used, submitted, or defended in accordance with applicable procedural law.[22] Such evidence must also be proven by legal provisions containing guidelines on how to be justified by law to prove the guilt charged against the accused. Evidence is also a guideline that regulates evidence that is justified by law to be used by judges in terms of proving the guilt charged.[23]

The purpose of proving the criminal element is to find out how to prove the guilt of the suspect, if the evidence has met the elements of the article then the suspect can proceed to the next stage of the process.[24] The system of evidence based on the law is negatively a combination of the system of positive statutory evidence with the system of proof according to the judge's belief.[25] So that the judge in determining the guilt or guilt of the accused must be based on evidence that is valid according to law accompanied by the judge's conviction obtained based on the evidence.[26]

Based on information from SDD and witnesses and facts found during the examination, investigators in the field of intelligence and immigration enforcement ensnared SDD with Article 120 paragraph (1) of the Immigration Law which states that:

People smuggling is an act aimed at seeking profit, either directly or indirectly, for oneself or for another person who brings a person or group of people, either organized or unorganized, or orders others to bring a person or group of people, whether organized or unorganized, who do not have the legal right to enter Indonesian Territory or exit Indonesian Territory and/or enter territory of another country in which the person does not have the right to lawfully enter the territory, either by using valid or false documents, or without using Travel Documents, whether through immigration checks or not. The penalty for people smuggling is punishable by imprisonment for a minimum of five years and a maximum of fifteen years and a fine of at least IDR 500.000.000 and a maximum of IDR 1.500.000.000.

The elements of Article 120 paragraph (1) of the Immigration Law are as follows:

a. Everyone

That this criminal act can be committed by anyone, including corporations without exception, regardless of gender, age, and occupation.

b. Doing Deeds with the Aim of Seeking Profit

Actions with the aim of seeking profit can be done directly or indirectly, and can be done for oneself or others. If the deed with the purpose of seeking profit has been done, but the benefit has not been obtained, the perpetrator can already be said to have committed the deed.[27] The intended profit can be made for personal, other people or group needs. If the benefits in question are not obtained by the perpetrator of the crime, but by others, because the act is committed by the perpetrator, the perpetrator can be said to have committed the crime of people smuggling. On the other hand, profits can be obtained directly in the sense that they are obtained directly from the actions of the perpetrators or profits can also be received indirectly, which means that the suspect benefits from what other criminals do.

c. By bringing a person or group of people, either organized or unorganized

Perpetrators of crimes can bring people or groups of people in an organized manner, with the intention of being carried out by a group, with stages of orders and activities systematically, where criminals have good coordination when committing their crimes through the place of departure, stopover, to arrive at the destination.

d. Or ordering others to bring a person or group of people, either organized or unorganized

That the word or is planned to be placed as an option when the previous act of caution may or cannot be proven, but there is an activity of asking another person to bring a person or group of people in an organized or unorganized manner, so that this activity can be called a crime.[28] This rule indirectly

states that if the intellectual actor of the crime of people smuggling, although not doing it directly, but the crime occurs through his request, then that person can be considered as a human trafficker.

e. Who do not have the legal right to enter or exit the territory of Indonesia and/or enter the territory of other countries

That the person does not have the right to enter the territory lawfully, is related to bringing a person or group of people, then there are several things to note namely:

- 1) Entering Indonesian territory illegally.
- 2) Exit from Indonesian territory illegally.
- 3) Unlawful entry into the territory of another country.

In this case it states that, a person brought or a group of people brought must meet one of the elements of the three points. Illegitimately, such points are intended as actions without valid immigration documents such as without a passport or without a visa.

f. Either by using valid documents or fake documents, or without using travel documents

That the travel document used by the smuggled person is an official document issued by an authorized official of a country, the United Nations, or other international organization to travel between countries bearing the identity of the holder. On the other hand there are fake documents, where the passport or visa carried by the smuggled person is a fake document or at all the smuggled immigrant does not carry any documents at all.

g. Whether through immigration checks or not

Everyone who plans to enter or leave Indonesian territory, must follow the inspection process at the Immigration Checkpoint and be examined by an authorized immigration official. If there is a person who is entered into Indonesian territory or removed from Indonesian territory by a certain person suspected of being a perpetrator of a people smuggling crime without following the Immigration inspection process or immigration official inspection, that person can be said to have committed a people smuggling crime.[29]

Based on the description above, at least two pieces of evidence according to Article 183 of the Code of Criminal Procedure have been fulfilled, then the panel of judges must obtain a conviction, namely that there has really been a criminal act of people smuggling based on Article 120 paragraph (1) of the Immigration Law. Based on the available evidence, there are several things that can be used as a basis for the panel of judges to obtain a conviction, namely:

- a. That it is true that a criminal act has occurred, namely based on information from EM who was ordered by SDD to bring SR and N alias H alias A to China by marriage mode.
- b. Convinced that SDD is the culprit. Based on information from ZF and CS who have an agreement to bring the Indonesian bride-to-be to China in exchange for money in the amount of 100.000 RMB/Yuan by looking at the evidence.
- c. That it is true that SDD ordered SR and N alias H alias A to make marriage documents religiously and state invalid, and make travel documents of the Republic of Indonesia invalidly based on the information of EM, SR and N alias H alias A.

Based on the facts in the decision of the Bale Bandung District Court on behalf of SDD with Number: 838/Pid.Sus/2019/PN.Blb and confirmed by the decision of the Supreme Court with Number 146/Pid.Sus/2020/PT.Bdg which proves that SDD has violated Article 120 paragraph (1) of the Immigration Law, there are elements of the article as follows:

a. Everyone

In this case, SDD has fulfilled the explanation of the element in question, namely that the perpetrators of criminal acts can be anyone, including corporations or do not know any gender or citizen.

b. Perform acts aimed at seeking profit, either directly or indirectly for himself or others

In this case SDD receives benefits from an agreement or agreement from ZF and CS families to bring the Indonesian bride-to-be to China in exchange for 100.000 RMB/Yuan.

c. By bringing a person or group of people, either organized or unorganized

The sentence explains, criminals bring people or groups of people in an organized manner, which means carried out by groups with the stage of order, activities systematically, where criminals have good coordination when carrying out their actions starting from the place of departure, stopover, to the destination. In this case, SDD brought SR and N alias H alias A to go to China.

d. Or ordering another person or group of people to bring in either organized or unorganized

The word "or" above has been planned to be included, as an option. When the initial deed may or may not be proven. But there are activities to ask others to bring people or groups of people in an organized or unorganized manner. In this case the SDD ordered EM to bring SR and N aka H eyebrow A to go to China.

e. Who does not have the right legally to enter Indonesian territory or exit Indonesian territory and/or enter the territory of another country, which person does not have the right to enter the territory lawfully

There are three important points in this element, namely:

- 1) Entering Indonesian territory illegally.
- 2) Exit from Indonesian territory illegally.
- 3) Unlawful entry into the territory of another country.

This indicates that the person or group of people brought must have one element of these three points. Invalid from these points which means not having valid immigration documents. In this case, SR and N alias H alis A do not have the legal right to leave Indonesian territory and enter Indonesian territory and enter the territory of other countries because SR and N alias H alis A obtain travel documents with invalid information.

f. Either using valid documents or fake documents, or without using travel documents

In the form of official documents issued by authorized officials of a country, these documents are in the form of valid passports and visas or certificates of refugees or asylum seekers. Passports become invalid if the procedure for granting passports and visas does not go through the correct process. In this case the Passport number: C41***77 in the name of N alias H alis and the Passport number: C36***10 in the name of SR were obtained invalidly.

g. Whether through immigration checks or not

Everyone who plans to enter or leave Indonesian territory, must follow the inspection process at the Immigration Checkpoint and be examined by an authorized immigration official. If there is a person who is entered into Indonesian territory or removed from Indonesian territory by a certain person suspected of being a perpetrator of a people smuggling crime without following the Immigration inspection process or immigration official inspection, that person can be said to have committed a people smuggling crime. In this case, SDD enters and exits through immigration checks.

The immigration investigation process at the Bandung Immigration Office in proving the elements of Article 120 paragraph (1) of the Immigration Law:[30]

a. Determine witnesses and suspects during an internal case in the field of intelligence and immigration enforcement at the Bandung Immigration Office.

b. Report the results of the internal case to the Immigration Division, West Java Law and Human Rights Office to conduct a joint investigation.

c. Report the results of the investigation with the West Java Law and Human Rights Regional Office of the Immigration Division to the Directorate General of Immigration Sub-Directorate of Investigation together with the Director of Supervision and Enforcement of Immigration.

d. From the results of the case title with the Sub-Directorate of Immigration Investigation which contains sufficient evidence and meets the elements of articles, the field of intelligence and immigration enforcement of the Bandung Immigration Office coordinates with the Prosecutor's Office whose working area includes the crime scene.

e. The Prosecutor's Office issued a letter with Number: B-1447/M.2.34/Euh.1/09/2019 stating that the case file on behalf of SDD with Number: BP/007/VIII/2019/Dikim/Bandung was complete and could be transferred to the Court.

f. Then the decision of the Bale Bandung District Court with Number 838/Pid.Sus/2019/PN.Blb

stated that SDD was proven to violate Article 120 paragraph (1) of the Immigration Law by looking at the existing elements.

g. SDD appealed the court's decision, so the decision was upheld by the Supreme Court's decision Number 146/Pid.Sus/2020/PT Bdg.

The researcher in this case argues that judges can pay attention to the elements of Article 120 paragraph (1) of the Immigration Law which states "who do not have the legal right to enter or exit territory from Indonesia and/or enter the territory of other countries". In proving the case of people smuggling with this mail order bride mode, what is meant in these elements include:

- a. Invalid immigration documents.
- b. Whether or not the marriage is valid.
- c. Whether or not Indonesian citizens and foreigners enter or leave Indonesian territory.

Based on information from Melani as the public prosecutor who handled the SDD case, it was stated that the SDD had fulfilled the elements of the article including the element of everyone, the element of action with the aim of seeking profit, the element of bringing someone or a group of people, then there was ordering someone, then the element of the right to enter and leave Indonesian territory, elements of the document and elements through immigration checkpoints or not so that SDD was proven to violate the article aforementioned.[31]

With the fulfillment of at least two pieces of evidence obtained in deciding the case, the provisions in Article 183 of the Code of Criminal Procedure state that a judge may not convict a person unless there are at least two valid pieces of evidence and he obtains a belief that a crime really occurred and the defendant is guilty of doing so has been fulfilled. So that the proof of people smuggling in the decision of the Bale Bandung District Court Number 838/Pid.Sus/2019/PN.Blb is in accordance with the provisions of laws and regulations and is strengthened by the Supreme Court decision Number 146/Pid.Sus/2020/PT Bdg is in accordance with Article 183 of the Code of Criminal Procedure.

LAW ENFORCEMENT OFFICERS HAVE DIFFICULTIES IN PROVING THE ELEMENTS OF THE PEOPLE SMUGGLING CRIME ARTICLE

1. The Mail Order Brides as a Mode of People Smuggling Crime

The application of Article 120 paragraph (1) of the Immigration Law related to people smuggling in mail order bride mode is the first case that DGI has successfully revealed, especially by the Bandung Immigration Office. Previously this article has been applied, but the majority of the mode carried out by smugglers is the boat people mode, namely illegal immigrants who enter Indonesia through organized sea routes.

The mode of mail mail order bride in Article 120 of the Immigration Law is quite difficult to prove because at the time of examination, the majority of victims do not want to admit that they have been smuggled because the victim has previously made a letter of agreement with the suspect. In addition, to prove the marriage of the victim requires a long examination so that it is proven that the marriage of the victim is not valid in state or religion. The reason it is difficult to uncover people smuggling in mail order bride mode is because there is an agreement between the two parties, between the suspect and the victim to be married. This act is done voluntarily, despite the fact that they get something uncomfortable for themselves. Their lives are also threatened and always intimidated by perpetrators. The difficulties experienced are also because these victims close themselves and tend to be alone.[30]

Then the difficult factor in proving Article 120 paragraph (1) of the Immigration Law related to people smuggling with this mode of mail order bride is that the majority of people consider the mode of mail order bride to be the same as the Criminal Act of Trafficking in Persons. But there is a fundamental difference between the two crimes, the difference lies in the element of carrying someone and the element of exploitation. In addition, when dissecting the elements of the article, there is a difference in perception between the immigration investigator and the public prosecutor who said that the mode of mail order bride is a trafficking crime, so the immigration investigator needs time to equate the perception with the public prosecutor.

According to the public prosecutor, the difficulty of proving the elements in Article 120 paragraph (1) of the Immigration Law related to people smuggling with the mode of mail order bride is because there has been no reference or like previous rulings or investigations that have been carried out by the prosecutor so that the prosecutor needs more time to prove the elements of the article with the

mode of mail order bride.

2. Obstacles Faced by Law Enforcement Officers in Proving the Crime of People Smuggling with the Mode of Ordered Brides

Based on information from immigration investigators and public prosecutors who handle people smuggling cases with mail order bride mode in SDD cases, there are several obstacles experienced while handling this case, namely:

a. Vodka Yosa Anggara, head of the intelligence and immigration enforcement section at the Bandung Immigration Office stated that the obstacles to proving the elements of the article are as follows:[32]

1) Investigate the validity of the marriage performed by the victim and the suspect because it needs good coordination with the Office of Religious Affairs.

2) When the suspect was asked for information, he was constrained by language and translators in the Bandung area which was quite difficult. Because the suspects and witnesses are from China who come from rural Chinese areas, where the language they use is slightly different from the usual Chinese.

3) Then the constraints in proving profits. When proving the material profit obtained that came from China through the Bank of China, it was sent and became several accounts of Indonesian citizens through money changers in the Jakarta area which were split into several accounts. To prove the flow of funds is not enough just to be seen from the current account or print out from the recipient's account, but there must be a party who has the right to explain it, namely the Bank and reinforced again with instructions from the Center for Financial Transaction Reporting and Analysis.

b. Caesar Ali Fahroy, an immigration investigator at the Bandung Immigration Office who handled this case stated that the obstacles to proving the elements of the article were as follows:[33]

1) Technically, the obstacle faced is language. This is because Mandarin is unique with various ethnicities and cultures. The suspect sometimes did not understand what the translator was saying. The translator used official Mandarin while the suspect did not really understand, because there were slight differences in intonation and Mandarin dialect that he understood.

2) Non-technically constrained when dismantling the suspect's account. To uncover someone's account is not as easy as expected, because this is the first time for immigration civil servant investigators at the Bandung Immigration Office in handling people smuggling cases with mail order bride mode. Investigators must coordinate with the Financial Services Authority to open all transactions between suspects and witnesses. However, the Financial Services Authority only provides a few transactions and not all of them because they are hampered by the rules allowed by the Financial Services Authority rules.

c. Fachmi Nugroho, an immigration investigator at the Bandung Immigration Office who handled this case stated that the obstacles to proving the elements of the article were as follows:[30]

1) During the examination of witnesses and victims were uncooperative because previously witnesses and victims had an agreement with the suspect not to say what the suspect told the investigator.

2) Proving the validity of marriage both by state and religion, because the Office of Religious Affairs provides convoluted information regarding the validity of marriage and tends to cover up marriages that occur.

3) The next obstacle is proving to get a profit. The suspect made transactions through the WeChat application, after the application the suspect exchanged the money or cashed out his e-money at one of the money changers in Jakarta. So that investigators need to coordinate with the Financial Transaction Reporting and Analysis Center to prove transactions from suspects to victims.

d. Melani, the public prosecutor and serves as the head of the pre-criminal prosecution sub-section at the Cimahi State Prosecutor's Office stated that the obstacles to proving the elements of the article are as follows:[31]

1) For SDD matters, the main obstacle is language. SDD uses slightly different Chinese and also cannot use English. When the examination goes to trial, the prosecutor uses Chinese language experts, so the trial process takes longer than it should.

2) The lack of evidence in the form of documents during the investigation stage provided by immigration investigators to the public prosecutor, but at trial evidence can be presented by prosecutors so as to help uncover criminal acts committed by SDD.

3) There has been no reference or previous ruling on people smuggling by mail order bride mode.

4) Proving the flow of funds coming from the victim's family to SDD because it uses someone else's account so coordination with the Financial Services Authority is needed.

Based on information from immigration investigators and public prosecutors handling SDD cases, it can be concluded that some of the obstacles felt during the proof of the elements of Article 120 paragraph (1) of the Immigration Law related to people smuggling with this mail order bride mode are:

a. Obstacles in proving the validity of marriage both by state and religion, because the Office of Religious Affairs provides convoluted information regarding the validity of marriage and tends to cover up marriages that occur;

b. The next obstacle is in the form of proving profit, because the suspect made transactions through the WeChat application. After the application, the suspect exchanged the money or cashed out his e-money at one of the money changers in Jakarta. To uncover someone's account is not as easy as expected, because this is the first time for the Bandung Immigration Office Inteldakim Immigration Investigator in handling people smuggling cases with mail order bride mode. Investigators must coordinate with the Financial Services Authority to open all transactions between suspects and witnesses. However, the Financial Services Authority only provides a few transactions and not all of them because they are hampered by the rules allowed by the rules of the Financial Services Authority;

c. During the examination of witnesses and victims were uncooperative because previously witnesses and victims had an agreement with SDD not to say what SDD ordered to investigators;

d. When SDD was questioned, language and translators in the Bandung area were quite difficult. This is because SDD and the witnesses came from inland China, where the language used is slightly different from Mandarin in general. SDD sometimes did not understand what the interpreter said, because he used formal Mandarin, while SDD did not really understand it. This happened because there were differences in intonation and dialect of Mandarin, so it took longer than it should have.

e. There has never been a reference or verdict related to people smuggling in mail order bride mode, so it takes more time to prove the SDD case.

CONCLUSION

Based on the discussion and fact analysis of cases and laws, SDD has been proven to meet the elements of Article 120 paragraph (1) of the Immigration Law related to people smuggling with the mode of mail order bride which has been proven during the trial at the Bale Bandung District Court. SDD was convicted of people smuggling and punished under the Immigration Law. Proving the elements of the article has been difficult to prove because it uses the mode of mail order bride, which is a new mode in the crime of people smuggling. Therefore, immigration investigators and public prosecutors need time to prove.

ACKNOWLEDGEMENT

The authors would like to thank the Directorate General of Immigration of the Republic of Indonesia, Bandung Immigration Office, and several other agencies. We realize that this research still has limitations in data collection and processing. We hope that this paper can be a guideline and recommendation for all immigration law enforcers in solving human smuggling cases with the mode of mail-order brides.

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