

## Law Enforcement *Transnational Crimes* against State Security and Sovereignty in the VUCA Era

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### Abstract

*Transnational crime, or commonly known as transnational crime, can cause a lot of harm to a country, even to certain areas within the country. There are many forms of deviation that can be done, such as overexploitation of natural and human resources that have an impact on global society. Problems such as poverty and conflict are often triggers for transnational crime. With its ability to cross national borders and impact other countries, transnational crime poses a serious threat to global security. The establishment of legal policy must begin by determining acts as criminal offenses and establishing sanctions for perpetrators of crimes (criminalization). Transnational criminal acts can be identified in legal provisions by grouping the elements of unlawful acts that can be subject to criminal sanctions. Law enforcement is carried out based on the area where transnational crime occurs.*

*Keywords : Law Enforcement, Transnational Crime, Security and State Sovereignty*

### INTRODUCTION

The era of globalization with all its impacts has been felt by many Indonesians. The ease of relationships, information acquisition and transactions that cross national borders are part of its positive impact. This proves that globalization has succeeded in removing the boundaries of countries that were previously separated by distance, place, and time, making it easier for the movement of people, goods, and services from one country to another.<sup>1</sup> However, it must also anticipate the negative impacts caused. One of the impacts that is closely related to crime that utilizes ease of access is related to access to technology. The phenomenon of globalization presents various dangers and challenges that become important problems in running a legal system that meets the expectations of society in the midst of very rapid dynamic changes in the social, economic, and political fields. Conditions of uncertainty occur due to the difficulty of

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<sup>1</sup> <http://www.adirioarianto.com/2013/11/globalisasi-dalam-konteks-transnational-crime.php>, retrieved May 15, 2023

predicting issues and events that are developing due to changes in dynamics that are strongly felt in law enforcement, this situation is known as VUCA.<sup>2</sup>

Indonesia has experienced many problems of street crime, traditional crimes or *predatory crimes*, now must be ready to face crimes committed in the international scope by utilizing technological sophistication. Well-organized *crime* has entered Indonesia recently. Narcotics, terrorism, human trafficking, banking, corruption and *money laundering* crimes are never-ending crimes and are very difficult to reach bylaw. This crime can be attributed to *organized crime*. The question arises whether *organized crime* is growing in Indonesia<sup>3</sup>.

Transnational crime, or commonly known as transnational crime, can cause a lot of harm to a country, even to certain areas within the country. There are many forms of deviation that can be done, such as overexploitation of natural and human resources that have an impact on global society. Problems such as poverty and conflict are often triggers for transnational crime. With its ability to cross national borders and impact other countries, transnational crime poses a serious threat to global security.<sup>4</sup>

Barda Nawawi Arief revealed that crime or crime is one form of deviant behavior that is always present in every society, so that no society is free from crime. According to him, deviant behavior can be a real threat to the social norms on which life or social order is based, and can put a strain both on individuals and in society as a whole. Therefore, crime is a real or potential threat to the maintenance of social order.<sup>5</sup>

Law enforcement has a target for people to obey the rules. Residents' obedience to the rules is caused by 3 (three) things, namely: <sup>6</sup>

- (1) fear of sinning;
- (2) fear because power according to the authorities is related to using the nature of rules that are imperative;
- (3) fear because it makes shame to do evil.

Enforcement of rules using non-penal vehicles has targets and objectives for the benefit of internalization.

## RESEARCH METHODS

The method used in the study is juridical normative. Normative research is where law is conceptualized as what is written in a law is *books* or law is conceptualized

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<sup>2</sup> Erwin Wijaya Siahaan, Triono Eddy, and Alpi Sahari, *Transnational Crime Countermeasures oLeh Ditpolair North Sumatra Regional Police in the Malak Strait Areaa*, *Legality : Journal of Law*, Volume 13 Number 2, December 2021, p. 109

<sup>3</sup> Harkristuti Harkrisnowo, *Transnational Organized Crime: in the Perspective of Criminal Law and Criminology*, *Indonesian Journal of International Law*, Volume 1, Number 2, January 2004, p. 324

<sup>4</sup> "Countering Transnational Organized Crime" in <http://www.kemlu.go.id/id/kebijakan/isu-kehus/pages/Penanggulangan-Kejahatan-Lintas-NegaraTerorganisir.aspx>, Accessed on May 15, 2023

<sup>5</sup> Muladi and Barda Nawawi Arief, *Criminal Theories and Policy*, Bandung: Alumni, 2013, p. 42

<sup>6</sup> Siswanto Sonarso, *Law Enforcement in Sociological Studies* Jakarta: Raja Grafindo Persada, 2014, p. 142

as a rule or norm rule that is used as a basis for human behavior as a good or bad benchmark<sup>7</sup>.

## DISCUSSION

### 1. Legal Policy Formulation of *Transnational Crime* in Indonesia

Crime has always developed in line with the progress of human civilization, from ancient times to modern times. The ability to cross national borders unimpeded is a major factor fueling the rise of modern crime today. In addition, advances in technology and information that have become an inseparable part of modern people's lives also play a role in this.<sup>8</sup>

The establishment of legal policy must begin by determining acts as criminal offenses and establishing sanctions for perpetrators of crimes (*criminalization*). Transnational criminal acts can be identified in legal provisions by grouping the elements of unlawful acts that can be subject to criminal sanctions. The criminal provisions contained in the law aim to create legal certainty, justice, and expediency, in accordance with the principles put forward by Gustav Radbruch<sup>9</sup>.

The principle of legal certainty is basically part of the principle of legality in criminal law. The principle of legality is also known as the "*principle of legality*", "*legaliteitbeginsel*", "*nonretroactive*", "*de la legalite*", or "*ex post facto laws*". The principle of legality is regulated within the framework of the Indonesian criminal law system which states that, "No act can be used as a basis for committing a crime unless it has been stipulated in the previous penal law" (*Geen feit is strafbaar and uit kracht van een daaraan voorafgegane wettelijke strafbepaling*). P.A.F. Lamintang and C. Djisman Samosir interpret the principle of legality with the terminology, "No act shall be punishable except under criminal provisions stipulated in pre-existing laws"<sup>10</sup>. Andi Hamzah translates with the term, "No action (action) can be punished except based on the strength of the criminal force that existed before"<sup>11</sup>. MoEljatno also stated that, "No act is punishable except on the strength of the criminal code in the law that existed before the act was committed"<sup>12</sup>. Oemar Seno Adji considers that the principle of "legality" is a very important characteristic, both in the context of the *rule of law* and the concept of socialist *legality*. This can be seen from the prohibition of the use of criminal law retrospectively or retroactively, the prohibition of analogies, and the application of

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<sup>7</sup> Amirudin and H. Zainal Asikin, *Introduction to Research Methods Law* Jakarta : Raja Grafindo Persada, 2006, p. 118

<sup>8</sup> Heru Soeprapto, *Computer and Cyber Crime and Anticipation of Prevention Arrangements in Indonesia, in the Compilation of Proverb Law*, Bandung: Image Aditya Bhakti, 2001, pp. 9-10

<sup>9</sup> <http://bolmerhutasoit.wordpress.com/2011/10/07/artikel-politik-hukum-tujuan-hukummenurut-gustav-radbruch/> , retrieved May 22, 2023

<sup>10</sup> P.A.F. Lamintang and Djisman Samosir, *Indonesian Criminal Law*, Bandung: New Ray, 1990, Pp. 1

<sup>11</sup> Andi Hamzah, *Principles of Criminal Law*, Jakarta: Yarsif Watampone, 2005, Pp. 41

<sup>12</sup> Moeljatno, *Criminal Code*, Jakarta: Bumi Aksara, Jakarta, 2001, Pp. 3

the principle of "*nullum delictum*" in criminal law, all of which reflect the principle of "*legality*".<sup>13</sup>

A crime is an act of deliberate or neglect to violate criminal rules, committed not for self-defense and without the guidance set by the state. Strictly speaking, crime becomes conducive and punishable acts have been officially determined by the state.<sup>14</sup>

To counter transnational crime, the United Nations has adopted Resolution 55/25 on the United Nations Convention on the Eradication of Transnational Crime. The Convention specifies that an offence is transnational if it involves more than one country, such as committing crimes in two or more countries, preparing, monitoring or controlling crimes from other countries, involving criminal organisations operating in more than one country, and impacting other countries even if the crime is committed in a particular country.<sup>15</sup>

Cross-border crime, otherwise known as transnational crime, results in many losses to a country, even to certain areas within the country. Various possible violations, such as excessive exploitation (of natural resources and labor), have an impact on people around the world. The emergence of problems such as poverty and conflict is one of the causes of cross-border crime. With its ability to cross national borders and impact other countries, transnational crime poses a threat to global security.<sup>16</sup>

Based on this, the formulation of *transnational crime* legal policy sees Indonesia's position influenced by several aspects, as follows:

a. Geographical aspect

Indonesia's geographical position refers to the location of the country on the earth's surface, including natural features such as continents, oceans, lakes, seas, and so on that affect the region. This natural phenomenon limits Indonesia and is characteristic of its geographical location.

b. Demographic Aspect

Demography as the study of human population, including in this case population that is inseparable from social life. Regulations regarding population and family development are regulated in Law Number 52 of 2009. However, the definition of demography is not specifically regulated in any law and is better known through the understanding of demographers as the study of human populations.

c. Aspects of Natural Resources

Natural Resources (SDA) are regulated in the 1945 Constitution as an important economic sector in supporting the development of the welfare of the Indonesian people. The 1945 Constitution states that "The land, water, and natural resources therein are controlled by the state and utilized for the greatest prosperity of the

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<sup>13</sup> Oemar Seno Adji, *Free Judiciary of the State of Law*, Jakarta: Erlangga, 1990, Pp. 21

<sup>14</sup> Moh. Irfansyah Hasan, *Transnational Crime and the Implementation of Indonesian Criminal Law*, Journal of Lex Crimen, Volume VII Number 7, September 2018, p. 19

<sup>15</sup> D.J. Harris, *Cases and Materials on International Law, 2nd Ed.*, London: Sweet & Maxwell, 2009, Pp. 236.

<sup>16</sup> Heru Soepratom, *Loc.cit*, p. 13

people". Regulation of natural resources is inseparable from national economic arrangements that are carried out with the principles of equality, efficiency, justice, sustainability, an insightful environment, independence, and maintaining a balance between progress and national economic unity.

## 2. Implementation of National Criminal Regulations in the Implementation of Law Enforcement against *Transnational Crime*

Philip C. Jessup was the first to introduce the concept of transnational crime in addition to international crime. According to Basiouni, transnational crime is a crime that involves more than one country, both in terms of the effectiveness of the crime and the means and techniques used in committing crimes across national borders. Transnational crime is essentially a crime orchestrated by the state. International community at international conferences of a global nature. The international treaty that specifically regulates transnational organized crime is the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25 of 15 November 2000). These crimes are committed by criminal groups in international networks. Article 3(2) of the Palermo Convention governs the nature of transnational crime. This regulation states:<sup>171819</sup>

For the purposes of paragraph 1 of this article, a criminal offence crosses national borders if:

- (a) registered in more than one country;
- (b) carried out in one country, but most of the planning, preparation, direction and supervision are carried out in another;
- (c) commit crimes in one country but involve organized crime groups engaged in criminal activities in more than one country; again;
- (d) The offense was committed in one state, but had serious repercussions in another.

Transnational crime is a common crime in many countries, including Indonesia without exception. In general, domestic criminal law makes a significant contribution to the fight against transnational crime. International crimes are subject to the jurisdiction of the International Criminal Court, but cross-border crimes are subject to national courts, all crimes at the international level, especially international crimes, are subject to jurisdiction. cannot be tried by the International Criminal Court<sup>20</sup>.

Of course, given the legitimacy of the positive territorial and state principles, substantive laws apply to those who commit crimes in a state. That is, criminals will be

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<sup>17</sup> Gukguk, Roni Gunawan King, and Nyoman United Putra Jaya, *Narcotics as Transnational Organized Crime*, *JYournal Indonesian Legal Development*, Volume 1 Nomor 3, 2019Pp. 342

<sup>18</sup> Andika, Stephen Reynold, *Law Enforcement Against Transnational Criminal Offenders through Extradition Treaties (An Interesting Note for Discussion)*, *The Era of Law-Scientific Journal of Legal Sciences* Volume 16 Nomor 2, 2019, Pp. 335

<sup>19</sup> I Wayan Aryya Sutia Juniarta, *Corruption as a Transnational Crime: Palermo Convention*, *Kertha Journal Speech*, Volume 9 No. 10, 2020, p. 4

<sup>20</sup> Romli Atmasasmita, *The Development of Criminal Law in the Era of Globalization*, Jakarta: Perum Perprinter RI, 2008, p. 65

tried according to the law where they committed the crime. Therefore, in the process of criminal prosecution, offenders are subject to the laws of the country where they committed the crime, and other countries are not allowed to intervene in the judicial process. Intervention by other countries is only limited to demands for leniency against perpetrators of crimes filed by the offending state as a form of government responsibility to protect its own citizens, and intervene in the judicial process such as the Chappelle-Lee-Corby case) is a drug case that occurred in Indonesia in 2004, a crime committed by Corby is a transnational crime, and the crime scene is inside Indonesia. The lawsuit shows that Australia's intervention was limited to requests to Mr Corby and did not interfere in court proceedings. The application form reflects the Australian Government's commitment to protecting its citizens.<sup>21</sup>

According to the concept of "territorial jurisdiction", a state has not only the right to regulate people, things, things, legal events and events that occur within its territory, but also the power to enforce the law. However, with today's advances in technology and satellite communications, a "crime" can be committed by a person in another country outside the territory of the country where the crime was committed.<sup>22</sup>

With human progress, territorial jurisdiction has actually undergone a technological expansion consisting of subjective and objective territoriality. According to the subjective territorial principle, the state has the right to exercise jurisdiction to try and punish criminals. The territory became the territory of another country. On the other hand, based on the principle of objective territorialism, states have the right to exercise jurisdiction to try and punish perpetrators of crimes initiated in other countries and resolved within their own territory.<sup>23</sup>

The scope of application of the Criminal Code is regulated in Articles 2 to 9 of the Criminal Code. This provision is considered by experts to be the embodiment of the principles of applicable criminal law: the territorial principle, the principle of positive citizenship, the principle of negative citizenship, and the universal principle. From the point of view of international law (criminal law), the issue now lies in national jurisdictions, particularly criminal jurisdictions, which also apply. It is based on these four principles. Strictly speaking, criminal justice is based on territorial principles, positive citizenship principles, negative citizenship principles, and universal principles. Meanwhile, new types of international and transnational crime are emerging that are increasingly sophisticated. The International Crime Convention also has some regulations. This Convention on international/transnational crimes, including the UNTOC, is the spirit and soul of the (criminal) jurisdiction over crimes or criminal activities that it primarily regulates. This can be seen and read in one of the articles

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<sup>21</sup> Muhammad Ramadhan, Dwi Oktafia Ariyanti and Henry Ariyanto, *The Function of National Criminal Law in Criminal Law Enforcement Against Transnational Crime*, Journal of Legal Studies, Volume 6 Number 1, May 2021, p. 68

<sup>22</sup> Moh. Irfansyah Hasan, *Op.cit*, p. 17

<sup>23</sup> J.G. Starke, *An Introduction to International Law (Translation F. Isjwara)*, Bandung, 1992, p.187

calling on the Parties/States Parties to exercise their jurisdiction broadly over the crimes provided for by the convention.<sup>24</sup>

Therefore it is appropriate to give more thought to the need to expand the scope of (criminal) jurisdiction in Articles 4, 5, 7 and 8 of the Criminal Code. Of course, this expansion is also linked to the prospect of an increase in increasingly sophisticated and frequent cross-border crime. Domestic and international to strengthen Indonesia's national interests that need to be protected from organized and unorganized crime or international/transnational criminal activities.

In principle, the participation of the international community in law enforcement complements legal loopholes in the eradication of crime, for example where domestic criminal law fails to prosecute transnational and transnational crimes. Basically, it's about making laws available so criminals can't get away with it.

## COVER

The state recognizes its sovereignty, so its criminal law plays an active role in the prosecution of transnational crimes, and because it recognizes its sovereignty, the positive laws in force are recognized as having been implemented and obeyed. Persons who have committed crimes in another country, regardless of their country of origin, are subject to that country's criminal law, there must be no interference of another country in the prosecution process, and the intervening process is carried out only in the case of that country, where the person cannot file criminal charges, other countries rely on the International Court of Justice to try crimes.

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