

**ELIMINATING TRAFFICKING IN PERSONS
AND PEOPLE SMUGGLING:
INDONESIA'S EXPERIENCE**

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A. BACKGROUND

Apart from growth, movement has always been one of human' distinguished features as a response to pressures of resources scarcity and opportunities offered by the exploration of new lands. Today, people are more mobile than before. Globalization and its associated phenomena such as transport, technology, economy, and media have practically given the effect of the shrinking the world and making migration process easier for people. According to International Organization for Migration's 2010 World Report, the total number of international migrants has increased from an estimated 150 million in 2000 to 214 million in 2010. Higher demands for labor in the developed economies and the availability of labor in underdeveloped economies have become the most prominent push and pull factors that boost international migration activities.

Traditionally, movement of people across international borders has been regarded as a legitimate subject of states' control, based on the principles of sovereignty and territorial integrity, thus creating a common preconception among modern states that any migration across international borders that is conducted in violation to the domestic law is not only "illegal", but also poses a threat to security; economy; and even to sovereignty of the receiving state. However, this conception is now challenged as we're looking at the positive contribution that migration makes to the economic growth of destination countries, as well as the significant amount of remittance it generates to countries of origin. Yet, it is not to say that international migration does not have downside stories. The cases of human trafficking and people smuggling are often associated with the stories of modern cross border migration.

B. TRAFFICKING IN PERSON : INDONESIA'S EXPERIENCE

1. Root Cause and Numbers

United Nations (UN) estimates about 700,000 to 4 million women and children are being trafficked each year.¹ Almost every country is involved in the human trafficking activities, being the country of origin, country of transit or country of destination. Indonesia's case is

¹ Henry Thompson, International Economics: Global Markets And Competition. London: World Scientific Publishing (2006).

unique, as it plays all the roles as a country of origin, transit and destination of human trafficking.

In Indonesia, basically, poverty is the root of the problem. It creates incentives for rural people to migrate to urban areas and overseas in pursuit of better livelihood. Indonesian Ministry of Foreign Affairs recorded no less than 3.091.284 Indonesian citizens are currently residing overseas, in which 58,9% are mostly employed as domestic workers. The actual figures are estimated to be 2-to-3 times higher since most Indonesian citizens do not report their residency in foreign country to the nearest Indonesian Embassies overseas. Lacking the sufficient education, these people are often unaware of the proper migration process, thus become engaged in human trafficking and people smuggling activities.

Not only the fact that the numbers of the Indonesians residing overseas are high, but the irregular migration process that often took place is also the common trigger to the increased numbers of Indonesians facing problems overseas, such as human trafficking and people smuggling. Adding to the complexity of the problem is the fact that the domestic sector, in which most Indonesian migrant workers are working, is often unregulated in many countries. In year 2011, the Ministry recorded around 20.000 cases faced by the Indonesians overseas. Most of the cases were related to the working condition in receiving countries, such as: unpaid salary, forced labour, irregular working hour, sexual harassment, and physical abuse. It is estimated that 100,000 women and children are trafficked from Indonesia annually² for commercial sexual exploitation, domestic work, forced marriages, and child labor.³ Consequently, migration and its related issues have continuously been given emphasis in Indonesian domestic and foreign policies.

The *Modus Operandi* for human trafficking cases involving Indonesians vary widely. Recruiters usually target vulnerable groups, female and under aged girls, and give deceptive information about some jobs overseas. Sometimes recruiters also use threats, abuses of authority, debt bondage, marriage or relationship, abduction, confinement or rape as means which led to exploitation. When the victims arrived in the country of destination, they were forced to work without payment or trafficked for prostitution.

²UNICEF-Indonesia,
<http://www.unicef.org/indonesia/protection.html>

Overview-Child

Protection,

³ Ruth Rosenberg, ed., International Catholic Migration Commission and American Center for International Labor Solidarity Trafficking of Women and Children in Indonesia, (2003).

Aside from being a country of origin for trafficked persons, Indonesia is also a destination for traffickers. There have been cases of foreign women and girls trafficked to Indonesia to work in prostitution business in big cities like Jakarta and Surabaya.

The Indonesian National Police's Crime Investigation Agency reported that there are 142 cases of human trafficking in Indonesia in 2010, involving 275 victims and 163 traffickers. The data show relatively decreasing trend comparing to the statistics in year 2005.

Trafficking in Persons Cases in 2005-2010

NO	YEAR	NO. OF CASES	VICTIMS (ADULTS)	VICTIMS (CHILDREN)	TRAFFICKERS	PROCESSES
1.	2005	71	125	18	86	P21: 40
2.	2006	84	496	129	155	P21: 57
3.	2007	177	334	240	240	P21: 88
4.	2008	199	519	88	291	P21: 107
5.	2009	142	208	67	163	P21: 67
6.	2010	142	208	67	163	P21: 67

2. National Policies to Eliminate Trafficking in Persons

As a consequence of the ratification of the UN Convention Against Transnational Organized Crime and Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, the Government of Indonesia adopted national laws and regulation, along with policy reform to improve the national collective effort in combating human trafficking.

a. National Legislation

In 2007, the Government of Indonesia enacted the Law Number 21 Year 2007 regarding the Elimination of the Crime of Trafficking in Persons that adopts a comprehensive approach to addressing human trafficking. Before the enactment of this Law, the punishment for the traffickers rely on the provisions set forth in the Indonesian Criminal Code, Indonesian Criminal Code Procedures, Law Number 23 Year 2002 on Child Protection, Law Number 39 Year 1999 on Human Rights, and Law Number 26 Year 2000 on the Court of Human Rights.

Additionally, the Government of Indonesia ratified ILO Convention No. 182 on the Worst Form of Child Labor in 2000 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime in 2009. The commitments are further strengthened in 2012 through the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

1) **Protection of Victim**

Protection for trafficking victims include activities: putting them in safe places, returning them (to their homelands or to their home countries) including efforts to provide legal aid and accompaniment, rehabilitation (physical and psychological health recovery), reintegration (reuniting them with their families or with their communities) and empowerment efforts (in economic and education sectors) so victims will not fall again into trafficking in persons.⁴

The Law No. 21/2007 provides the following protections for the victims:

- 1) Victims shall have the rights to bear witness without appearing before the court;
- 2) Victims of human trafficking are protected in accordance to the Law Number 13 Year 2006 on The Protection of Witness and Victims;
- 3) Victims and family members of victims shall have the right of identity undisclosed;
- 4) Victims shall have the right to receive restitution in regards to their suffering, medical coverage or other losses as a result of the crime.

For Indonesians who become victims of human trafficking abroad, Indonesian missions overseas bear the responsibilities to provide protection. This obligation is set forth in as regulated in Law No. 7 Year 1999 on International Relations. The protection include among others: health services, counseling and administrative assistance, safe shelter and returning them to Indonesia.⁵ To coordinate the missions in carrying their protection mission is the responsibility of the Directorate for Indonesian Citizens and Legal Entities Protection, the Directorate General of Protocol and Consular Services, the Ministry of Foreign Affairs.

⁴ Coordinating Ministry For People's Welfare, The Elimination of Trafficking in Persons in Indonesia, 2004-2005.

⁵ Coordinating Ministry For People's Welfare, The Elimination of Trafficking in Persons in Indonesia, 2004-2005.

2) Prevention of Trafficking in Persons

Efforts to prevent trafficking in persons have been implemented by mapping trafficking in persons cases in Indonesia - as domestic and international destinations, increasing public education - especially alternative education for children and women, including its facilities and infrastructure, and raising the public's awareness by providing sufficient information on trafficking in persons and all related issues in media, and securing access for families, especially women and children to obtain education, training, higher income and social services. The efforts involve all government and private sectors and (national and international) NGOs, international organizations, community organizations, individuals, and mass media.

b. The National Plan of Action on the Eradication of Trafficking in Persons and Sexual Exploitation of Children (RAN PTTPO & ESA) 2009 – 2014.

The action plan target is to increase national efforts to eliminate trafficking in persons, which include prevention, prosecution and severe punishments on traffickers, and victim protection through repatriation, rehabilitation, counseling, education and skills training. In addition to the above mentioned action plans, there are other national plans of action that support the effort to the eliminate trafficking of persons, namely: the National Plan of Action on the Elimination of the Worst Forms of Child Labor (Presidential Decree No. 59 Year 2002), the National Plan of Action on the Elimination of Sexual Exploitation of Children (Presidential Decree No. 87 Year 2002), and the 2004-2009 National Plan of Action on Human Rights (Presidential Decree No. 40 Year 2004).

3. Achievement

In the Country Programme for Indonesia 2012-2015, UNODC has noted the Government of Indonesia's effort to proactively improve its ability to combat the transnational organized crime and illicit trafficking, especially through the ratification of several critical international legal instruments pertaining to the issue. Domestically, the Government has steadily increased the capacity of its institutional actors and agencies, including the training of special units to combat TOC and trafficking, and has successfully prosecuted and convicted individuals for such offences. At international level, along with the Government of Australia, Indonesia co-chairs the Bali process, which brings together over 50 countries to work on practical measures to combat trafficking in persons and smuggling of migrants.

Certainly, the elimination of trafficking in persons activities in Indonesia is still a work in progress. Yet, Government has made its commitments through the adoption of laws and policies to continue combating human trafficking. Challenges we are now facing are how to improve the capacity of national institution and officials dealing with trafficking in persons, as well as to perform a good border management on our vast coastline of 56,716 kilometres and numerous islands spread across the country, to protect these areas from the traffickers and smugglers that want to use them as entry and exit points for their illegal activities.

C. PEOPLE SMUGGLING

Just like human trafficking, people smuggling is a growing global crime that exposes thousands of migrants to unacceptable risks and challenges the integrity of international borders. In the last two decades, globalization and conflicts have led to the increase in international migration flows. Given the restrictive immigration policies put in place by the destination countries and the improvement of human and technological resources deployed at borders in order to better monitor entry and exit movements, many migrants lacking the means to reach their country of destination legally are becoming the object of criminal groups specializing in people smuggling.

The hazardous travel undertaken by these migrants may sometimes be short and direct, but at other times lengthy and circuitous. The duration between departure and arrival can vary from few days to months or even years. Smugglers use land, sea and air routes, but their itineraries can evolve rapidly when detected by border officials. Very often travel conditions are difficult, dangerous and sometimes deadly. At their destination, having crossed the international border unlawfully, migrants are confronted with their illegal status and usually have very limited means to integrate successfully into the new country's society.

For organized crime groups, smuggling people across borders is a "low-risk, high profit" business. The International Organization for Migration stated that profitability of smuggling for organized criminal groups is estimated at USD 3 to 10 billion a year⁶.

⁶ The International Organization for Migration and People Smuggling 2011, IOM's Immigration and Border Management Programmes, available at <http://www.iom.int/jahia/Jahia/about-migration/managing-migration/managing-migration-irregular-migration/consequences-of-trafficking-and-policy-responses>.

Smugglers still benefit from weak legislation and relatively slim risks of being detected, arrested and prosecuted. Moreover, numerous other crimes are often linked to people smuggling, human trafficking, identity fraud, corruption and money laundering. This creates shadow governance systems that undercut the rule of law. Regarding the situation, international cooperation between concerned States' law enforcement agencies, International organizations and other relevant actors need to be enhanced.

1. Indonesia as Transit Country for People Smuggling Activities

Indonesia is a major zone for smuggling of migrants, often *en route* to Australia. Given Indonesia's geographic position, its porous borders and the relatively stable political situation in the last decade, the archipelago has become the transit point for many risky voyages to Australia. These migrants usually come from Asian countries which are still struggling for political stability and security such as Afghanistan, Iran, Iraq, Sri Lanka and Myanmar. The United Nations High Commissioner for Refugees revealed that there were more than 2,800 refugees and asylum seeker transiting in Indonesia in 2011 to seek asylums from Australian government⁷. By late 2011, IOM had more than 1.800 people under its care⁸. As not every new *arrivé* has the chance to register with any of these two organizations, it can be assumed that the numbers of unreported cases are at least twice as high.

In certain conditions, the arrival of these asylum seekers can lead to people smuggling activities. Many asylum seekers are suspected of entering Indonesia with forged travel identity documents before trying to head illegally for Australia. The proportion of asylum seekers who use illegal migration channels, most notably smuggling, to circumvent restrictive admission policies in advanced industrial countries are increasing⁹. In response to this demand, people smugglers have emerged and then facilitate illegal entry attempts across international borders.

As a transit country, Indonesia has different policies when dealing with the arrival of migrants compared with destination countries such as Australia or New Zealand. Indonesia

⁷ UNHCR UN Refugee Agency in Indonesia 2011 available at <http://www.unhcr.or.id/en/>

⁸ Antje Missbach and Frieda Sinanu 2011, 'The Scum of the Earth? Foreign People Smugglers and Their Local Counterparts in Indonesia', *Journal of Current Southeast Asian Affairs*, available at <http://hup.sub.uni-hamburg.de/giga/jsaa/article/viewFile/501/499>

⁹ Hannah Purdy 2010, 'People Smugglers: The Other 'Boat-People'', available at http://eview.anu.edu.au/anuj/vol2_10/pdf/ch01.pdf

only allows those who entered the country without proper documentations to remain in Indonesia if they have applied for asylum seeker status at the UNHCR office in the country. Illegal migrants who are found by the authorities without any UNHCR Letter of documents that determined their status, would end up at the immigration detention centers. However, the Indonesian government does allow refugees to remain in Indonesia until a suitable solution is found for them by international migrant organizations such as the UNHCR and IOM.

Indonesia is not a Party to the 1951 Refugee Convention and its 1967 Protocol. Therefore Indonesia is not obliged to provide any assistance to asylum seekers and refugees in Indonesia, be it in terms of surviving in the country or in resettlement process. Nevertheless, the government allows international organizations like IOM and UNHCR through its implementing partner organization to work with, and support, asylum seekers and refugees. In addition to that, Indonesia does not have national legislation on the Rights and Integrating Mechanism of Refugees with Local Community. Due to that, the role of Indonesia in supporting UNHCR is limited to providing shelters and logistics to the migrants until they are being granted the official status of asylum seeker from the Destination Country.

2. National Law pertaining to People Smuggling

In mid 2011, Indonesia's parliament has passed tough new law aimed at fighting people smuggling under Law no. 6/2011 on Immigration. Smugglers, corrupt immigration officials who often assist people smugglers and those who fail to report persons guilty of immigration violations could face 5 to 15 years in prison¹⁰. Before the ratification of the law, people smugglers have been prosecuted for simple immigration violations or breaches of the maritime law which carry a relatively light sentence. However, without strict border controls and firm authorities to oversee the implementation of the rules of law, people smugglers will always be able to find loop holes to maintain their activities.

3. Indonesia's Vulnerability from People Smuggling Activities

Although Indonesia is not a destination country for people-smuggling, the country is still vulnerable of people smuggling activities which involves Indonesian citizens. Many poor villagers who live as farmers or fishermen are being persuaded by "agents". These agents,

¹⁰ Matt Brown 2011, 'Indonesia Passes Laws Criminalizing People Smuggling' available at <http://www.abc.net.au/news/2011-04-07/indonesia-passes-laws-criminalising-people/2624376>

then, offered a good amount of money to those farmers or fishermen and lured them on to the boats on false pretences. Most of these farmers or fishermen did not realize that the boat they are supposed to navigate will travel outside Indonesia's territory (Australia). The Indonesian government is aware that most Indonesians who are being detained in Australia for people-smuggling cases do not have major roles in the boat. In contrary, they are victims of the real smugglers because they are merely involved as transporters and service providers. Their involvement in people-smuggling activities is also mainly pushed by poverty.

One of the main concerns of Indonesia is the use of many under-aged and inexperienced Indonesian nationals who are being used to transport the human cargo to destination countries. These young people are becoming main targets due to its cheap "labor" costs. Based on data from embassy and consulate generals of Indonesia in Australia, until May 2012, there are 451 Indonesians who are being detained for people smuggling cases where 28 of them claim of being under-age. Furthermore, there is a tendency of incensement in the number of Indonesians involved and convicted of people smuggling activities since 2008. Derived from Indonesian embassy and consulate generals in Australia's data, in 2009 and 2010 there is a rise of 19%. In 2011, the percentage increases to 39%.

These young people are being imprisoned as adults until they can show legal proofs that they are minors. If they are found to be minors legally, they will be immediately released from adult detention and sent home. The main issue is that most of the detainees come from poor families without sufficient knowledge about immigration and border rules. With this limitation, it is unsurprising that they are not able to run a successful defense case. Unfortunately, very few of these Indonesians knew the penalties that await them. Those penalties include mandatory prison sentences of five years with a non-parole period of 3 up to 20 years of imprisonment.¹¹

¹¹ Australian Institute of Criminology 2008, 'People Smuggling versus Trafficking in Persons: What is the Difference?', *Transnational Crime Brief no. 02, 2008*, available at <http://www.aic.gov.au/documents/F/2/2/%7BF226C525-F4D9-4AEC-B6D8-424A7E44C27B%7Dtcb002.pdf>

D. INTERNATIONAL COOPERATION IN ELIMINATING TRAFFICKING IN PERSONS AND PEOPLE SMUGGLING

To address the issue of trafficking in persons and people smuggling, the Government of Indonesia recognized that there are needs to establish cooperation among states, especially among countries of origin, countries of transit and countries of destination, to eliminate the crimes of trafficking in person and people smuggling.

1. Bilateral Cooperations

At the bilateral level, Indonesia has signed MoUs to ensure the protection of Indonesian migrant workers with countries of destination. In 2006, for example, the Government of Indonesia and the Government of Malaysia has signed MoU on the Recruitment and Placement of Indonesian Domestic Workers, which then amended on 30 May 2011. The MoU regulates the rights and obligations of both the employers and employees in the destination country such as Malaysia. The MoU is expected to prevent any kind of abuses towards migrant workers that leads to the crime of trafficking in persons or people smuggling. The Government of Indonesia continuously pushed other countries of destination to sign similar agreements to ensure the protection of Indonesian migrant workers.

To address the problems of people smuggling, Indonesia has also been cooperating with Australia as one of the main Destination Country in the region. In November 2006, Indonesia and Australia signed Lombok Treaty, a comprehensive security treaty which includes combating transnational crime, development of police cooperation to combat refugee flows and the means to tackle people smuggling activities. Furthermore, at the 9th Australia-Indonesia Ministerial Forum in 2008, the meeting produced a Joint Statement on People Smuggling that roundly denounced the practice as a crime and restated the need to counter the issue, both bilaterally and regionally. This agreement complimented the existing field level cooperation between line agencies of the two countries. Australia has, for example, equipped Indonesian patrol boats with satellite navigation and other intelligence measures for intercepting boats, among other gestures.

The Indonesian Police has also established a special task-force to combat people smuggling. Until mid-2010, there were already 12 task-forces at regional police commands around Indonesia. Since 2010, more than 140 boats carrying asylum seekers have been

intercepted in Indonesian waters and countless others have been prevented from departing due to the efforts of the Indonesian police¹². Many illegal migrants also travel to Indonesia through Malaysia, making the Province of Riau Islands as the key entry point. Since then, Indonesian and Malaysian police have been developing cooperation in tightening maritime border control between the two countries.

The different status between Indonesia as Transit Country and Australia as Destination Country who is a Party of the UN Convention 1951 leads to different responsibilities of each country on handling the issue. Australia has repeatedly pushed Indonesia to accept greater responsibility for managing migrant flows such as to readmit asylum seekers who have fled Indonesian territory but have been intercepted by Australian border control forces on the high seas. On the other hand, the government firmly believes that as a transit country such responsibility should not be bestowed upon Indonesia¹³. Indonesia is willing to offer strong stated commitments to combat people smuggling, but shouldering responsibility as much as the responsibility of the Destination Country is a different proposition.

Bilateral co-operations between Indonesia and countries such as Australia and Malaysia have the aim to combat the problem of human trafficking and people smuggling. However there are still problems in the process which needs to be addressed further. Border controls between countries need to be tightened, maritime patrols need to be enhanced and differences in legislation which deals with the issue should be put into consideration.

2. Regional Cooperation

Over the past several years, Indonesia and other ASEAN Member States have affirmed the importance of stronger and more effective regional and international cooperation in the area of trafficking in persons and people smuggling. ASEAN Member States are committed to prevent trafficking in persons, punishing the criminals and protecting victims of trafficking ASEAN recognizes that cooperation in these areas is vital to successful domestic prosecutions as well as to eliminate safe havens for traffickers, smugglers and their

¹² Antje Missbach and Frieda Sinanu 2011, 'The Scum of the Earth? Foreign People Smugglers and Their Local Counterparts in Indonesia', *Journal of Current Southeast Asian Affairs*, [available at http://hup.sub.uni-hamburg.de/giga/jsaa/article/viewFile/501/499](http://hup.sub.uni-hamburg.de/giga/jsaa/article/viewFile/501/499)

¹³ Antje Missbach and Frieda Sinanu 2011, 'The Scum of the Earth? Foreign People Smugglers and Their Local Counterparts in Indonesia', *Journal of Current Southeast Asian Affairs*, [available at http://hup.sub.uni-hamburg.de/giga/jsaa/article/viewFile/501/499](http://hup.sub.uni-hamburg.de/giga/jsaa/article/viewFile/501/499)

accomplices. The issue of human trafficking and people smuggling themselves have become main concerns of ASEAN even back in 1997 at the 2nd Informal ASEAN Summit in Kuala Lumpur¹⁴.

Thus, a number of instruments have been developed to support such cooperation. ASEAN already has a treaty on mutual legal assistance in criminal matters which was completed in 2006 and a set of guidelines endorsed by the Senior Official Meeting on Transnational Crime (SOMTC) in 2007 to deal with the two issues. The commitment of the regional association towards these issues are also expressed in the ASEAN Declaration against Trafficking in Persons, especially Women and Children, the ASEAN Declaration against Transnational Crime and the ASEAN Vision 2020.

The different roles of each country, either as Origin, Transit or Destination Country, put different perspectives on viewing the urgency of the issue. This affects the effectiveness of these international co-operations to produce legal instruments or outcomes which will give stronger and firmer framework on tackling the problem of transnational crimes, including human trafficking and people smuggling. ASEAN is longing to have a convention on transnational crime but with different interests from its member countries, this has to wait.

3. Multilateral Cooperation

Indonesia is also involved in international fora which put great emphasis on the termination of illicit transnational migration in Asia Pacific. One of the main forum where Indonesia has an active role is in the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime or similarly known as the Bali Process. This forum was launched in 2002 and it gathers 46 origin, transit and destination countries from throughout the region with UNHCR and IOM to combat the issue¹⁵. Indonesia, with Australia, is co-chairing the forum which tries to foster regional cooperative efforts through technical workshops and increases cooperation between interested countries and agencies such as the IRC and Interpol. Country participants of Bali Process acknowledge the

¹⁴ S. Pushpanathan 1999, 'Combating Transnational Crime in ASEAN', available at <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan011390.pdf>

¹⁵ International Organization for Migration 2002, 'Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Conference/Process)', available at <http://www.iom.int/jahia/Jahia/about-migration/managing-migration/managing-migration-irregular-migration/consequences-of-trafficking-and-policy-responses>

contributions of the forum on helping them building a shared information platform among its members. The forum also emphasis the urgency of strengthening cooperation on Mutual Legal Assistance (MLA) and law enforcement involving crimes related to people smuggling and trafficking in persons.

Although these international co-operations brought many advantages for its participants, the disparities of legal frameworks between countries led to discrepancies in cooperation on law enforcement. Those discrepancies sometimes become the main obstacle for the implementation of assistances provided by the forum which give difficulties for the cooperation of country participants to succeed in tackling the issue in the region. Thus, harmonization of legal cooperation procedures within the region is very crucial if all of the country participants want to tackle people smuggling activities in Asia Pacific.

E. CONCLUSION

The crimes of trafficking in persons and people smuggling are serious concerns to many countries due to the increasing trend of the number of victims. As these crimes take place cross-borders, thus, concerted efforts of the states are required to prevent and prosecute the perpetrators of such crimes, as well as to protect the victims. This requires not only efforts of the governments, but all stakeholders at any levels, including NGO's, scholars and the entire civil society.