PEOPLE SMUGGLING IN INDONESIA

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ABSTRACT

This article investigates the practice of people smuggling in Indonesia. Located in the center of international traffic, Indonesia has become a strategic place for this business. Besides, the absence of laws regulating this smuggling activity as well as the lack of coordination among institutions of the government has been a huge obstacle for resolving this problem. People smuggling may occur due to many factors, one of which is the encouraging factors that cause the immigrants to leave their country. Several actions that have been taken were merely based on the Immigration Law and the punishments were only given to the wrongdoers, while those asking to be smuggled escaped the law.

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Contribution/ Originality

This study is one of very few studies which have investigated the "vacuum of law" governing people smuggling in Indonesia. By discussing the triggering factors of people smuggling in the country, the paper highlights the need for specific laws to mitigate the issue of people smuggling in Indonesia.

1. INTRODUCTION

Indonesia has been facing a huge problem related to human smuggling. The crowded traffic of goods, services, and human in this archipelagic country is now appearing to be a double-edged sword. On one hand, its strategic position is beneficial for Indonesia's growth and development. On the other hand, in terms of people smuggling, the same strategic position has made the country one of the strategic spots within the international chains of people smuggling business. In extreme cases, Indonesia is even considered to be the most promising market for this business.

The increasing number of illegal migration from and to Indonesia in the last few years indicates that this country is still one of the target markets of international people smuggling. Besides, at the same time, the increase in illegal migration also shows the inability of the Indonesian government to control it.

Table-1. Cases of illegal migration from and to Indonesia

No.	Year	Cases
1.	11 October 2009	255 illegal immigrants from Sri Lanka were caught sailing on a carrier cargo in Sunda Straits (Saptowalyono, 2009).
2.	15 November 2009	40 illegal immigrants from Afghanistan were caught in Labuan Pandeglang Regency, Banten Province (Saptowalyono, 2009).
3.	9 July 2011	MV Alicia boat (no documents found) carrying 87 illegal immigrants from Sri Lanka heading to Canada was apprehended in Riau Islands (CMIS PS Satgas Bareskrim Mabes Polri, 2012).
4.	1 November 2011	62 illegal immigrants were caught and 8 died after their ship sank in Pangandaran, West Java (CMIS PS Satgas Bareskrim Mabes Polri, 2012).
5.	17 December 2011	Around 250 illegal immigrants were apprehended and 102 died after their ship sank in Trenggalek, East Java (CMIS PS Satgas Bareskrim Mabes Polri, 2012).
6.	21 June 2012	Indonesian Naval Armies apprehended 200 illegal immigrants from Pakistan after their ship had an accident, and caught the *smuggler* named DA a.k.a I, a 19-year old Afghanistan citizen (Sindoradio, 2013).
7.	1 November 2012	Zainuddin Masdit, sued for people smuggling, appealed to the high court after being sentenced to a 7-year imprisonment and IDR 500 million fine, subsided 3 months in jail of Batam District Court. He smuggled 11 illegal immigrants of Sri Langkan from Malaysia to Batam.
8.	15 December 2012	35 illegal immigrants from Iraq heading to Australia were caught in Santolo Beach, West Java's South Coast, precisely in Cikelet District, Garut Regency (Antaranews, 2013).

There are some points that may be considered as the basic problems in people smuggling. Firstly, the "vacuum of law" concerning people smuggling in Indonesia. The Indonesian government does not have any specific regulations/laws dealing with people smuggling. Currently, the Indonesian government only relies on some laws to deter the crime, such as Law No. 5 of 2009 on The Establishment of Convention against Coordinated Transnational Crime; Law No. 15 of 2009 on Protocol against Migrant Smuggling by Land, Sea, and Air; and Law No 6 (2011) about Immigration. On the other hand, unlike people smuggling, human trafficking crime is specifically regulated by Law No. 21 of 2007. Secondly, there are some problems of coordination and perception among the government institutions (especially the law enforcers) about how to deal with people smuggling. Furthermore, the problem arises at three different levels namely; the strategic level (related to policy), tactical level (related to interpretation and regulation), and technical level (for example, on-the-spot execution) so that sooner or later they will influence the performance of the legal system in dealing with the crime.

2. DISCUSSION

2.1. Encouraging Factors for People Smuggling

According to the UN's Protocol against the Smuggling of Migrants by Land, Sea, and Air and the UN's Convention against Organized Crime of People Smuggling, "immigrant smuggling" is defined as an act of entering the territory of a certain country in illegal entry where the person involved is not the citizen and has no legal permit to stay in the country. In this case, the act of illegal entry refers to the regulation used by the entered country. Martin and Miller (2000) state that *smuggling* is a term associated with individuals or groups, for the sake of commercial profit, who mobilize people illegally (violating the laws), trespassing borders of a certain country (International Organisation for Migration, 2012). Thus, it can be concluded that *people smuggling* is a term referring to an illegal activity organized by group or individual trespassing international borders in which the payment is based on the service performed. There are three main elements to justify (both separately and not) whether an activity is considered as people smuggling: (1) the activity trespasses international borders; (2) the activity is conducted illegally; and (3) the activity is profit oriented.*People smuggling* has become a promising business with an estimation of profit ranging from approximately US$5,000 to US$10,000,000. According to the calculation, there are one million immigrants who have to pay an average between US$5 to US$10,000 by force once they are about to cross the international borders. The International Organization for Migration (IOM) recorded that people smuggling, which is the "dark side" of globalization, is a growing large scale business (Martin and Miller, 2000). Besides, people smuggling has also created certain problems for the country where the immigrants seek protection, and this is the case in Indonesia as the destination country.

People smuggling may occur due to many factors, one of which is the encouraging factors that cause the immigrants to leave their country. One of those encouraging factors is economic consequence; a country which cannot provide adequate job opportunities for its citizens tends to have a high rate of unemployment which may encourage the citizens to move to other countries to secure employment. A good example will be Mexico which failed to create adequate job opportunities for its citizens. (Martin and Miller, 2000). Even if there are jobs available, low salary has become another reason for the immigrants to leave the country (Mines and De Janvry, 1982).

Besides this economic factor, internal conflicts in a country may also trigger the migration because an endless conflict or warfare will cause poverty and unemployment. The war or conflict itself is often related to political issues, security, ethnicity, religion, etc. In this case, conflict becomes the encouraging factor for immigrants to leave their home country, seeking security or at least staying away from the conflict. The increase in people smuggling is also often caused by the immigrants' motivation after hearing promises given by the smuggler about what they will find in the destination country. In this case, this external factor attracts immigrants to leave their home country and move to the "dream land". For instance, they are promised a more stable economic situation which, in their minds, will allow them to get better jobs and better income. On the other hand, in the destination countries, which are usually developed, the business owners would be happy to accommodate the immigrants as their companies could spend less money on their salary than if they use local workers (Todaro and Marusko, 1987).
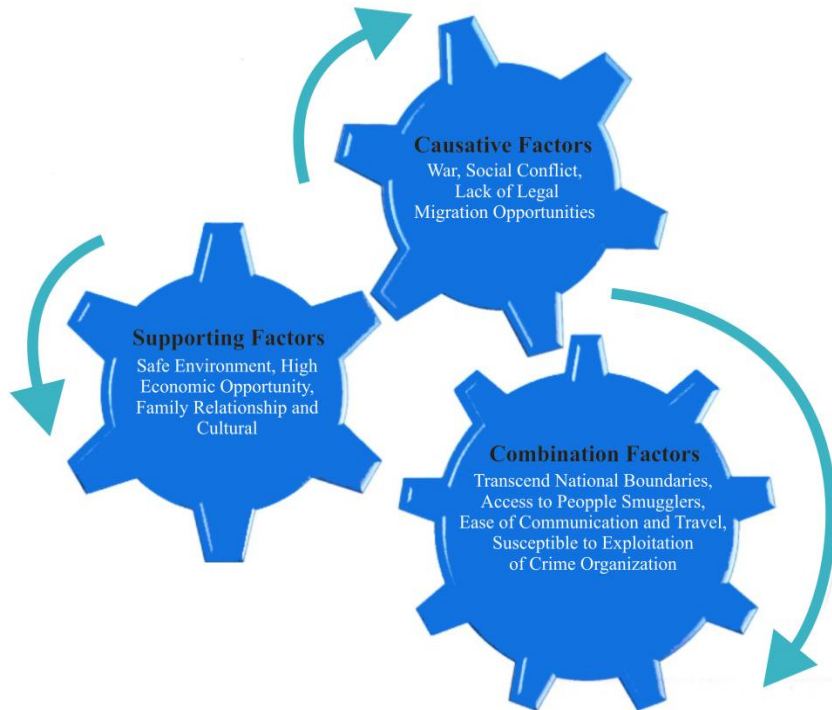
Figure-1. Triggering factors of *people smuggling*

According to Figure 1 above, there are three factors triggering *people smuggling:* (1) encouraging factors (war, social conflict, poverty, and lack of opportunity to become legal immigrants); (2) attracting factors (secured environment, better economic opportunity, and family and cultural relationships); and also (3) combination factors (trespassing international borders, access to people smuggling syndicates, ease of communication and travel, and vulnerability toward exploitation by organized criminal syndicates) (Grossman, 1984).

2.2. People Smuggling in Indonesia

The factors that attract people smuggling in Indonesia include the country's vast geographical situation - despite the lack of its security, its strategic position is convenient for transit before the immigrants reach the destination country, such as Australia. Until to date, Indonesia has not ratified the 1951 Geneva Convention, but has only ratified the 1967 Protocol with Law No. 15 Year 2009 on Protocol against the Smuggling of Migrants by Land, Sea, and Air. Indonesia is in a weak position to solve the problem of people smuggling, protection seekers, and refugees from other countries because the government does not have specific regulations concerning the problem. Every time the problem occurs, the Indonesian government always sends the immigrants who seek protection to the UNHCR located in Jakarta which has the authority to decide their status. Until their status is decided, the Indonesian government allows the immigrants to stay in Indonesia (CMIS PS Satgas Bareskrim Mabes Polri, 2012). Because of this hospitality, the immigrants feel safe to come and stay in Indonesia by making use of the United Nations High Commissioner for

Refugees (UNHCR, 2012) to seek protection. Problems caused by people smuggling in Indonesia are now getting more serious. In the beginning, the illegal immigrants caught by the Indonesian Border Security were groups of those sailing to Australia and using Indonesia only for transit, but now Indonesia has become the destination itself.

Thus, Indonesian and Australian governments have conducted a collaborative operation to solve the problem. However, until now the Indonesian government only relies on Law No. 15 Year 2009 and Law No 6 (2011), as well as (Government Regulation No 31, 2013). According to these regulations, which is quite biased, only the smugglers can be punished, while those asking to be smuggled namely the illegal immigrants cannot be taken to task (UNHCR, 2012).

There are several factors that may have shifted Indonesia's role from a transit country into a destination country: (1) weak regulations in Indonesia; (2) well-known Indonesian hospitality, especially towards immigrants; (3) the availability of unofficial ways of entries as Indonesia is an archipelagic country; and (4) the existence of UNHCR in Jakarta.

Unlike in Indonesia where the number of illegal immigrants has been increasing until 2012, with various methods and motives of entrance, the number of people smuggling cases in Australia is decreasing (CMIS PS Satgas Bareskrim Mabes Polri, 2012). According to CMIS PS from the Unit of Criminal Investigation Bureau, Indonesian Police Headquarters, there are various methods for people smuggling, for instance,(1) the immigrants enter Indonesia's territory by plane using *visa on arrival*; (2) they get into Indonesia by ship through Riau Islands and continue the trip to other islands using a domestic flight; (3) they get into Indonesia by road access via the borderline between Indonesia and Malaysia in West Borneo; (4) they intentionally terminate any documents of identification in order to easily obtain refugee cards from the UNHCR; (5) the immigrants pay some amount of money to smuggling syndicates for taking them illegally to the destination country; (6) the smuggling syndicate recruits under-age crew for the ship carrying the illegal immigrants; (7) the illegal immigrants stay together with refugees who seek protection in camps provided by IOM and UNHCR in Indonesia; and (8) the smugglers organize the ship departure by recruiting local people to be parts of the syndicate (Australian Government Department of Immigration and Citizenship, 2013).

According to data from Unit of Criminal Investigation Bureau of Indonesian Police Headquarters and Unit of Criminal Investigation Bureau of the Regional Police Headquarters, the number of illegal immigrants caught tends to increase every year. For instance, there were 116 immigrants in 2008 and the number increased to 996 in 2009, 2,352 in 2010, 2,470 in 2011, and 9,735 in 2012 (CMIS PS Satgas Bareskrim Mabes Polri, 2012).

Table 2 is based on the data of CMIS PS of the United Officials of Criminal Resort Board of Indonesian Police Headquarters, *Penanganan Penyelundupan Manusia di Indonesia (the Handling of People Smuggling in Indonesia)*, 2012.

Tabel-2. The distribution of illegal immigrants in Indonesia

No.	Regional Police Headquarters	Year				
		2008	2009	2010	2011	2012
1.	West Java	-	25	239	82	790
2.	Banten	20	289	217	101	762
3.	East Java	-	112	347	213	469
4.	West Nusa Tenggara	79	195	192	41	359
5.	Criminal Investigation Bureau	-	-	-	-	320
6.	East Nusa Tenggara	12	213	604	258	221
7.	Metro Jaya	-	-	1	21	195
8.	Lampung	-	22	293	122	185
9.	Sumatera Utara	-	94	251	30	56
10.	Aceh	-	-	-	129	55
11.	Riau Islands	-	-	7	87	47
12.	West Sumatera	-	-	21	-	43
13.	Special Region of Yogyakarta	-	-	74	14	35
14.	Bali	-	-	57	50	34
15.	Bengkulu	-	46	-	-	28
16.	Riau	-	-	29	-	25
17.	Central Java	-	-	-	43	20
18.	South Borneo	-	-	-	19	-
19.	West Borneo	-	-	11	6	-
20.	Southeast Sulawesi	-	-	9	-	-
21.	Papua	6	-	-	-	-
Total		116	996	2,352	2,470	3,801

Source: CMIS PS the Unit of Criminal Investigation Bureau, Indonesian Police Headquarters, "Penanganan Penyelundupan Manusia di Indonesia" (the Handling of People Smuggling in Indonesia), 2012.

The illegal immigrants (based on nationality) apprehended by the Indonesian Naval Army in 2012 are listed in Table 3 below.

Table-3. Illegal Immigrants (based on nationality) apprehended in 2012

No.	Country	Jan	Feb	Mar	Apr	Mei	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
1.	Others	77	95	216	77	68	137	111	291	114	172	147	29	1,534
2.	Afghanistan	58	143	86	175	17	74	55	66	276	124	29	78	1,181
3.	Iran	-	15	120	-	12	108	142	-	63	42	10	-	512
4.	Myanmar	-	65	2	67	28	2	7	25	73	11	35	96	411
5.	Sri Lanka	3	11	-	12	-	-	24	43	17	17	78	46	251
6.	Iraq	2	3	5	11	-	68	83	-	-	5	38	-	215
7.	Pakistan	3	6	-	-	6	19	34	1	36	97	-	-	202
8.	Vietnam	-	-	-	-	-	50	-	-	-	-	-	-	50
9.	Somalia	-	-	-	32	-	-	-	-	-	-	-	-	32
10.	Palestine	-	-	-	22	-	-	4	-	-	-	-	-	26
11.	Syria	-	-	-	-	-	-	9	-	-	-	-	-	9
12.	India	-	-	7	-	-	-	-	-	-	-	-	-	7
13.	Bangladesh	-	-	-	-	-	-	-	-	2	1	-	2	5
14.	Sudan	-	-	-	2	-	-	2	-	-	-	-	-	4
15.	Egypt	-	-	-	4	-	-	-	-	-	-	-	-	4
16.	Ethiopia	-	-	-	2	-	-	-	-	-	-	-	-	2
17.	Persia	-	-	1	-	-	-	-	-	-	-	-	-	1
18.	Nepal	-	-	-	-	-	-	1	-	-	-	-	-	1
Total		143	338	437	404	131	458	472	426	581	469	337	251	4,447

Source: CMIS PS Unit of Criminal Investigation Bureau, Indonesian Police Headquarters, Penanganan Penyelundupan Manusia di Indonesia (the Handling of People Smuggling in Indonesia), 2012.

Based on Table 3 above, the illegal immigrants were mostly from countries categorized in "others" followed by Afghanistan with 1,181 people, Iran with 512 people, and Myanmar with 411 people. Among the countries listed in the table, Persia and Nepal contributed the least number of illegal immigrants. In addition, the comparison between the number of people apprehended and those arrested as suspects were quite different. From Table 3, it is clearly seen that the implementation of the Immigration Law, which was expected to solve people smuggling, did not meet up with the expectation (*das sollen*). For instance, in 2011, out of 2,470 immigrants apprehended, only 47 people (43 Indonesians and 4 foreigners) were arrested as suspects, while in 2012, out of 3,801 immigrants apprehended, only 64 people were arrested as suspects. This discrepancy occurred because, unlike Law No. 21 of 2007 on Human Trafficking, the Immigration Law contains only several sections about people smuggling and says that only the smuggler can be given punishment, while those who pay to be smuggled cannot be given any punishment.

3. CONCLUSION

People smuggling is influenced by: (1) push factors such as war, social conflict, poverty, and the lack of opportunities for legal migration; (2) pull factors such as secure environment, better economic opportunities, and family and cultural relationships; (3) combination factors (trespassing international borders, access to people smuggling syndicates, ease of communication and travel, and vulnerability toward exploitation by organized criminal syndicates. These factors lead to the increase in people smuggling in Indonesia, which is conducted with various methods, such as by air using *visa on arrival,* by ship via Riau Islands and domestic flights to other islands, and by road access via the border between Indonesia and Malaysia in West Borneo. Other methods used are: immigrants/smugglers intentionally terminate any documents of identification in order to easily obtain refugee cards from the UNHCR; immigrants pay some amount of money to smuggling syndicates for taking them illegally to the destination country; smuggling syndicates recruit under-age crew for the ship carrying the illegal immigrants; illegal immigrants stay together with refugees who seek protection in camps provided by IOM and UNHCR in Indonesia; and smugglers organize ship departure by recruiting local people to become part of their syndicate.

As noted, punishments were only given to 43 Indonesian and 4 foreigners smugglers in 2011; and to 61 Indonesian and 4 foreign smugglers in 2012. In terms of illegal immigrants, the Indonesian government apprehended 2,470 immigrants in 2011 and 9,735 immigrants in 2012. It can be concluded that people smuggling in Indonesia is difficult to handle as the government relies only on the Immigration Law which gives punishment only to the smugglers, but not to those asking to be smuggled.

4. ACKNOWLEDGEMENTS

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