

BRINGING THE FERRYMEN INTO THE DOCK: UNDERAGE INDONESIANS AS ‘PEOPLE SMUGGLERS’ IN TRANSPORTING ASYLUM SEEKERS AND REFUGEES TO AUSTRALIA

Wayne Palmer, Department of International Relations, Bina Nusantara University, and Antje Missbach, Monash University.

Worldwide, children and teenagers are recruited for activities related to people smuggling. The reasons for their recruitment range from the lower cost of their labour and their readiness to obey orders to their perception within smuggling operations: since children have a low chance of being prosecuted, it is often believed that laws are more lenient when they are tried for their involvement in smuggling.

Many underage transporters are among those involved in the irregular transportation of asylum seekers from Indonesia to Australia. They are usually hired as deckhands to help with tasks such as operating the boat's engine and preparing food for passengers. According to the Indonesian Foreign Ministry, between September 2008 and September 2013, 1,440 Indonesian boat crew members were arrested and sentenced for people-smuggling offences in Australia; of these, 316 were under the age of 18 (Indonesian Foreign Ministry 2013). These numbers may not be entirely reliable, as the method used most frequently for determining age was the x-raying of a wrist, a technique which is far from providing accurate assessments of

age –not to mention that because of different diets and propensity to chronic malnutrition, the bone composition of young Indonesian fishermen is likely to be very different from that of young Australian people.¹⁶

Since 2011 it has been public knowledge that dozens of Indonesian minors have been unlawfully imprisoned in adult jails in Australia.¹⁷ Yet it was not until 2012 that the Australian government began to give the benefit of the doubt to transporters who claimed to be minors (Roxon 2013). The Indonesian government has, on several occasions, urged Australia to differentiate between the fishermen who staff the boats and the organizers of the people smuggling networks. Moreover, it has also criticized the imprisonment of Indonesian fishermen and particularly minors, arguing that this re-victimizes already disadvantaged and innocent children (Missbach 2015). However, when taking a closer look at how Indonesia itself has dealt with the involvement of underage transporters who have been involved in people smuggling, a number of shortcomings and weaknesses in that country's legal mechanism also become obvious.

In Indonesia, people smuggling was classified as a crime, starting in May 2011. Under Law 6/2011, smuggling carries severe sentences of between five and fifteen years in prison as well as fines ranging between Rp500 million (US\$39,000) and Rp1500 million (US\$117,000). Since the enactment of this law, dozens of people have been prosecuted and sentenced for their involvement in people smuggling in Indonesia (Missbach 2016).

Our work has investigated how Indonesian courts have dealt with underage smugglers. In particular, we examined the case of Hidayah (a pseudonym), a young repeat offender who ferried asylum seekers to Australia on three occasions but had escaped conviction there. On his fourth attempt Hidayah was arrested and sentenced in Indonesia, but his sentence was less severe than the minimum prescribed by Law 6/2011, as he was still considered a minor.

16 The reliance on wrist x-ray analysis as evidence of maturity appears to have contributed to efforts to obtain documentary evidence of age from Indonesia and to the giving of limited, if any, weight to such evidence when assessments were made of the ages of the young Indonesians. See Australian Human Rights Commission, 2012.

17 Currently, there are two trials in which the underage Indonesian offenders seek restitution from the Australian government for the wrongful imprisonment. See Hawley, 2017.

How and why was Hidayah recruited into people smuggling operations? As a teenager who had quit school as he had to find work in order to financially support his family, he was more open to accepting job offers that promised unusually high compensation. When recruited as a transporter to bring asylum seekers to Australia, Hidayah was promised by the recruiter that he would be paid at the time of departure, rather than upon arrival in Australia. Hidayah had insisted on this condition, not only because his payments during his previous trips had not come through in full. However, despite his insistence on a timely payment, the organizers deferred his payment. Hidayah had no opportunity to protest this change or to withdraw from the job.

Our research indicates that underage people smugglers are more vulnerable to exploitation in people-smuggling operations because of their age and are thus often not positioned to object. Our examination of Hidayah's case points to the judicial system's inability to understand the deception inherent in recruiting minors for these smuggling operations. In some cases, their recruitment and treatment during the people-smuggling journeys equates to trafficking. Criminal investigators and courts give very little consideration to the possibility that the minors arrested for people smuggling might have been trafficked themselves. In fact, because of their repeated involvement in smuggling operations, Indonesian courts dismissed the possibility that the transporters may be victims of trafficking, ruling instead that, despite their young age, they should have known from their previous encounters with law enforcement agents that they were acting illegally, as was argued in Hidayah's case. His high vulnerability to recruitment into illegal activities resulting from his family's poverty was ignored by law enforcement.

Under political pressure to show their commitment to combatting people smuggling, Indonesian law enforcement and justice officials must show results in the arrest and prosecution of smugglers. Having studied closely a number of trials and court documentation, our research indicates that there is an inherent tendency to seek punishment for people smuggling rather than for related crimes, simply because the evidentiary requirements for people smuggling are easier to meet than, for example, those for proving human trafficking.

Our research defines the employment of underage Indonesian males in smuggling as exploitative on the basis of four factors.

These are:

- Deception: the minors are often not given correct information about the real destination of their journey when they are recruited.
- Restricted decision-making: the minors are unable to make decisions about matters such as the journey's route, the selection of passengers, the preparation for the journey, etc.
- Inability to object: once at sea, the minors have scant opportunities to object. Even if they realise they are committing or are expected to commit a crime, such as entering Australian territory illegally, they have no option but to follow instructions.
- False, unpredictable compensation offers: it is common for minors not to be paid the compensation they were initially promised.

Recommendations

Law enforcement and other justice officials in Indonesia ought to pay more attention not only to factors such as age and age-specific vulnerabilities. More importantly, when scrutinising people-smuggling cases they should start to consider socio-economic disadvantages experienced by young Indonesian fishermen during their recruitment into criminal activities. Also, the minors' limited power in decision-making before the journeys, as well as their overall lack of agency during the journeys and of course the unpredictability of compensation need to be considered as part of the judicial process.

By paying closer attention to the recruitment processes and the pathways that lead underage fishermen into participating in people smuggling, law enforcement and other justice officials in Indonesia might be able to detect trafficking practices. Becoming more aware of the inherent deceptive and exploitative practices used within the recruitment and treatment of underage fishermen before and during the transportation of asylum seekers to Australia would improve minors' access to justice. Recognized as victims of trafficking, these underage fishermen would not be convicted for people smuggling and would not have to carry the main blame for the unsanctioned mobility of asylum seekers, but rather they would be entitled to state support for their recovery and reintegration, which is required by Indonesia's human trafficking law.



References

- Australian Human Rights Commission (2012). *An Age of Uncertainty: Inquiry into the Treatment of Individuals Suspected of People Smuggling Offences Who Say that They Are Children*. July 2012.
- Hawley, Samantha (2017). "Australia urged to 'respect the court' by lawyer for Indonesians detained over people smuggling", ABC News, <<http://mobile.abc.net.au/news/2017-11-14/australia-urged-to-respect-the-indonesian-court-by-lawyer/9150938?pfmredir=sm>>.
- Indonesian Foreign Ministry (2013). *Diplomasi Indonesia 2013: fakta dan angka*. Jakarta.
- Lelliott, Joseph. (2017). "The involvement of Indonesian children in migrant smuggling to Australia: characteristics, punishment, and protection." In *Smuggling Workshop 2017: The Theory and Praxis of Irregular Migration Facilitation*. El Paso, TX, United States, 6 April.
- Missbach, Antje (2015). *Troubled Transit: Asylum seekers stuck in Indonesia*, ISEAS, Singapore, 2015: 198.
- Missbach, Antje (2016). *Sentencing People-smuggling Offenders in Indonesia*, Policy Paper 12, Centre for Indonesian Law and Islamic Studies, University of Melbourne. Available from: http://law.unimelb.edu.au/__data/assets/pdf_file/0005/2065559/CILIS-Policy-Paper-12-Missbach_FINAL_Web.pdf>.
- Palmer, Wayne and Antje Missbach (2017) "Trafficking within migrant smuggling operations: underaged transporters as 'victims' or 'perpetrators'?" *Asian and Pacific Migration Journal*, 26, 3, pp. 287–307.
- Roxon, Nicola (2012). "People Smuggling Convictions Review Completed", Attorney-General's Media Release, 29 June http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/1744889/upload_binary/1744889.pdf.

