

8 Discretion and the trafficking-like practices of the Indonesian state

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Observers of Indonesia's formal labour export programme claim that trafficking-like practices occur at each stage of the migration process. Many reports single out the actions of recruitment agents for particular attention. For example, the US Trafficking in Persons (TIP) Report states that Indonesia's licensed recruitment agents operate 'similarly to trafficking rings', noting that they 'routinely falsif[y] birth dates, including for children, in order to apply for passports and migrant worker documents' (US Department of State 2009: 159). The United States government also criticizes the fact that these agents keep female recruits in holding centres, sometimes for periods of many months, during which time they are not free to leave. In addition, agents allow women to finance migration through wage deductions after they have been deployed, a practice which the report argues creates situations of debt bondage and forced labour in the countries where they work. Not all of these practices contravene Indonesian law: indeed, post-deployment payment of recruitment fees and the use of holding centres are sanctioned by the state. However, it is clearly illegal to refuse recruits the right to leave those facilities and to falsify their personal data. Yet public officials responsible for monitoring the programme seldom refer evidence of illegality to law enforcement officers, choosing instead to ignore it.

The fact that the Government of Indonesia tolerates illegal behaviour by recruitment agents presents an interesting case for observers seeking to understand the role that states can play in addressing human trafficking. Accusations of state-sanctioned trafficking draw attention to the relationship between the state and illegality. As Heyman and Smart (1999: 1) have noted, 'While the state does not always conspire with crime, it is intriguing to inquire after the conditions under which governments and illegal practices enjoy some variety of symbiosis.' In the context of Indonesia's labour migration programme, the state tolerates illegal practices that help to meet the formal objectives of documenting migrant workers and maximizing deployments.

Close attention to bureaucratic processes reveals that while corruption is clearly a factor that persuades officials to ignore instances of illegality, they also do so as a way of exercising discretion. In Scott's (1997: 36) view, the 'appropriate and legitimate' use of discretion is essential for achieving 'good government'. Discretion allows the state to adapt to developments in ways that rigid rules and the strict enforcement of laws do not (Tremblay 1993: 329). However, as Rose-Ackerman