

***Transnational Crimes of Human Trafficking in Malacca Strait:
National Security Threat Analysis***

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Abstract

This paper is an elaboration of the research results generated from three activities: a meta-analysis, field studies and reflexivity. The fieldwork took place in Melaka and Dumai. The network of human smuggling in the Malacca Strait takes three main forms; fraud models, demand models and necessity model. The first two models are most often used as tools to investigate elements related to human trafficking, including human smuggling. There are important differences to human smuggling especially on the necessity model. In this area the root problem lies on the invisible actors, including the state and other violence actors which sometime the researcher tends to ignore. Human smuggling has affected state security, from territorial security until the state power and sovereignty including human security. Therefore, the most appropriate way to combat human smuggling is a defensive strategy in which elements of ethics and responsibility of governance are integrated in it. By including moral values, the state could still possibly serve as a basis for security policy, and as a force for improvements in global security governance.

Keyword: *human smuggling, state security, Malacca Straits, defensive strategy*

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Introduction

The analysis of the human smuggling generally still overlaps with the issues of human trafficking. It is believed that there are other factors of human smuggling that require deeper strategic and security analysis. The formation of human smuggling networks is not only the result of human exploitation through fraud (fraud models), and due to the high demand in the scope of the market (demand model), but also it happens because of asymmetrical power relations, discrimination, violence, conflict and war. Those situations have threatened human security. Even more, those can raise collectivities and needs of individual to smuggle (necessary model).

Fear and security threats as the excesses of ethics which are not run by a regime have raised the issue of human smuggling in a global scale. In fact, many illegal workers who sneak or are being smuggled want to obtain the status of refugee or asylum from relatively secured countries. Director of the Water Police of Indonesia, Brigadier General Iman Budi Supeno reveals that Indonesian waters territory is vulnerable to be means of human smuggling from Pakistan and Myanmar.¹

In 2010 to 2013, there was a significant increase on human smuggling activities which generally came from conflicted country, particularly from the Middle East and South Asia. In some cases of human smuggling, the eradication action which emphasizes on punishment can be fatal for the smugglers who really need protection from the State. By implementing the approach of international law, the smugglers have been confronted by the security military policy. The smuggling action is similar to the cross-border crimes and other actions, such as the smuggling of forbidden or hazardous goods and terrorism.

Referring to the cases above and the number of other human smuggling cases, in the last few years, it can be presumed that the issue of human smuggling is urgent to be reviewed by applying the security and strategic approach considering the existing problems and long-term impact to the national security of the country. Security threats posed by smuggling human beings have reached a critical area for the survival of the nation, ranging from territorial security to the state sovereignty and the power of the state to the threat of human security.

Furthermore, it is necessary to gather a series of questions in order to get the accurate data and information about the human smuggling. How is the actual content in the human smuggling network? How far is the country involved in causing this problem? What kind of security strategies applied to reduce and combat the smuggling of human beings? Are those strategies appropriate for all countries and for all the problems caused by the smuggling of human beings?

¹ <http://www.republika.co.id/berita/nasional/hukum/13/02/15/mi8gw0-perairan-indonesia-rawanpenyelundupan-manusia>, 15 Februari 2013

Security and Strategic Approach

Moh Ayyob,² Kamarulnizam Abdullah and Mahmud Embong³ are among scholars who have given attention to the human smuggling cases related to the national security. They clearly show the strategic values of the nation affected by the smuggling of human beings crimes. There are at least three main principles of national security that could be threatened by cross-border human smuggling crimes;⁴

1. sovereignty
2. territorial Integrity
3. political, social, economic and cultural survival.

The study of human smuggling seen from the victim side is rare. It happens as a result of violence committed by actors outside the smuggling network. Human smuggling can be related to the issues of sovereignty and violations of the nation. However, the roots of this problem also lie in the countries themselves. The analysis of human smuggling in connection with national security is problematic because it does not look at the main source of the problem. The behavior of nation's violence, conflict and war has contributed to human smuggling efforts. The smuggling agents are only associated with elements of violence and exploitation of the smuggled people.

A site of judiciary in the United States has elaborated the distinction between human trafficking and human smuggling as follows;⁵

Table 1. The difference between Human Smuggling and Human Trafficking

HUMAN TRAFFICKING	HUMAN SMUGGLING
It must contain an element of force (actual, perceived or implied), unless under 18 years of age involved in commercial sex acts.	The person being smuggled is generally cooperating.
It forces labor and/or exploitation.	There is no actual or implied coercion
Persons trafficked are victims	Persons smuggled are violating the law. They are not victims.
It is an enslavement and subject to limited movement or isolation, or had documents confiscated.	The smuggled people are free to leave, change jobs, etc.
It does not need to involve the actual movement of the victim.	It facilitates the illegal entry of person(s) from one country into another country.
There is no requirement to cross an international border.	Smuggling always crosses an international border.
Person must be involved in labor/services or commercial sex acts, i.e., must be "working".	Person must only be in country or attempted entry illegally.

² Mohamed Ayoob, Regional Security in the Third World. Regional Security in the Third World: Case Studies from Southeast Asia and the Middle East. Boulder Colo. Westview Press. 1995, p.72.

³ Kamarulnizam Abdullah dan Mahmud Embong, Kepentingan Strategik, Kepentingan Strategik di Dalam Keselamatan Negara Malaysia. Sejarah, Universiti Malaya. No.6, 1998, pp.132-135.

⁴ Ibid, pp.151-176

⁵ The Human Smuggling and Trafficking Center Fact Sheet: Distinctions between Human Smuggling and Human Trafficking, Unclassified, January 2005, <http://criminaljustice.state.ny.us/ops/training/bcpo/smugglingvstraffickingguide.pdf>.

The description on the table is useful as a template for determining the initial contents of human smuggling networks. The smugglers coming into Indonesia are alleged to have taken these three following forms:

- a. Amateur Smugglers, which is run privately by those who have the means of water transportation to make living. It is used in human smuggling when there is a rise in demand, either from a person or a group of people in exchange for money;
- b. International smuggling networks, which is more like an international criminal organization selling and offers services to move people illegally from one country to another, or pass through cross-border;
- c. Small groups of organized smugglers, which is organized or half-organized human smuggling attempt. It sometimes also involves the big company operating for transporting people illegally.⁶

Seeing from the types and forms from the explanation above, it can be said that human smuggling is like a business in international markets, since there is a supply and demand factor. From this perspective, the actors in the market have seen promising benefits from smuggling human (supply model), and the rising of demand for smuggling (demand model). Those two factors become determining factors in human smuggling cases. In addition, the punishment to the offender is not effective as the demand remains high.⁷

It is often said that corruption in law enforcement agencies can be the problem that makes the implementation of sanctions to the trafficker is difficult to be performed.⁸ For the same reason, the issues of human smuggling have been consuming a lot of attention in the area of law enforcement. From the law perspective, the war against human trafficking not only requires the credible officials, but also a government that has a willing to cooperation with the international law.⁹

From the perspective of the United Nations, the fight against human trafficking including human smuggling and global compactness requires commonality of approaches and viewpoints in viewing the issue. This is applied to all elements that have function to prevent, protect and punish the actors in the chain of human trafficking crimes.¹⁰ USAID offers one way out for tackling the problem of the anti-trafficking policy that covers four areas; prevention, protection, prosecution and partnership. It is the same as the view of the United Nations that the punishment is the most appropriate solution to handle the human smuggling case.¹¹

⁶ Cat Barker "The people smugglers" business model Foreign Affairs, Defence and Security Section, 28 February 2013, Research Paper no. 2, 2012–13
http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1213/13r p02

⁷ Alexis Aronowitz, Gerda Theuermann and Elena Tyurykanova, Analyzing the business Model of trafficking in human beings to better prevent the crime, OSCE, Austria, Ueberreuter, 2010

⁸ US State Department. Trafficking in Persons Report 2008 - Indonesia. 4 June 2008. Accessed from:
<http://www.state.gov/documents/organization/105658.pdf>

⁹ 13Janie Chuang, "Beyond a Snapshot: Preventing Human Trafficking in the Global Economy" Indiana Journal of Global Legal Studies: Vol. 13: Iss. 1, Article 5. 2006, p.1

¹⁰ UN Global Compact, ILO and UN.GIFT, 2009, Human Trafficking: Everybody's Business, http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2009_03_27/Story_Survey_Final.pdf

¹¹ USAID, "Counter Trafficking in Persons, Field Guide". Center of Excellence on Democracy, Human Rights and Governance in the Bureau for Democracy, Conflict and Humanitarian Assistance within the United States Agency for International Development. April 2013, pdf article

This proposal emphasizes that the issue of human smuggling requires serious attention from strategic and security study academics. The usual rights applied by countries are the principles of the state sovereignty over its territory. On the contrary, in the scope of international relationship cooperation, there has been a violation over these rights especially to the less powerful countries. Hikmahanto Juwana, a professor of international law from the Faculty of Law, University of Indonesia confirms that the state government should not treat the issue of illegal entrants and asylum with the transactional principles which he says that as “barter”. The example of this action is by accepting foreign funds.¹²

Suhakam’s annual report mentions that human smuggling occurs almost every day.¹³ It is equal to the report of other scholars like J.M Winw¹⁴ and Irene Fernandez,¹⁵ which also provides information about the fact that almost every day the Malacca Strait becomes the entrance and exit of the human smuggling. In contrast to human trafficking that is understood as technique to gain financial profit by performing coercion, fraud and violence, human smuggling is a more fundamental issue in security, ethics and morals in applying domestic and international law.

Thus, security threats arising from the human smuggling reach out to a very wide area as they are not merely about regional security. The triggering factors are asymmetric state power, racial discrimination, religion or ethnic violence, war among countries and global armed conflict. Human smuggling also includes exploitation over a country that has a weak and insecure government. It often involves war and armed violence. In short, the fear of the national security and insecure situation of the country become the main causes of the human smugglings.

The result of the research that we conducted at Malacca Strait shows that there are three major models of human smuggling network in Malacca; fraud model, demand model, as well as the necessity model. Those three models contain elements of crime and economic background which concern about the problem of symmetrical power relations in countries and between countries to cause problems in human security. This at once affirms that the human smuggling issue needs more concern in political area, moral ethics of governance, on the security policy makers and managers, rather than in military.

Human Smuggling Networks in the Strait of Malacca; Study Cases

Fraud’s Model

It is extremely difficult to trace the perpetrators of the human smuggling network that uses the techniques of fraud, as from departure to the destination agents; the smuggling involves many parties or actors. They swap from one location to another, as an organized network, which threaten the human security. This case primarily happens to the crime of human smuggling from Indonesia to Malaysia. The ignorance victims are usually not aware of what the smugglers do. Thus, they do not realize that they will be

¹² Antara, Jakarta, 26 September 2013. Accessed through <http://id.berita.yahoo.com/indonesia-harus-bersikap-tegas-terhadap-australia-015629765.html>

¹³ Annual Report, 2004 about Malaysia in “Trafficking in Person Report”.

¹⁴ J.M Winw, *Alein Smuggling: Transnational Crime against National Borders*, Presentation to the working Group on Organized Crime, National Strategy Information Centre, Paper, Washington DC, October 8. 1996, winter, p.57.

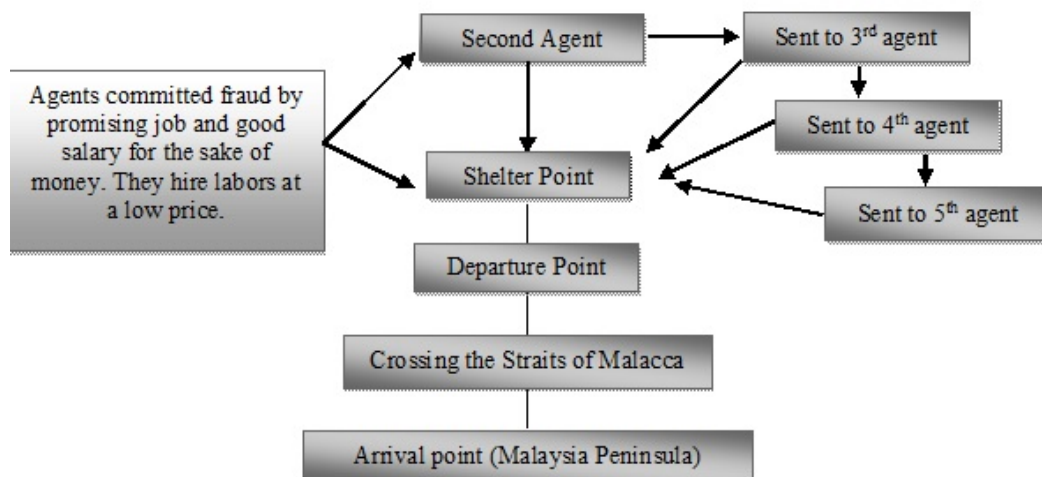
¹⁵ Irene Fernandes, *Stop Trafficking in Person*, Welcome address, 2007, Tenaganita, Malaysia, p.17.

smuggled. Aryo is a representative person to illustrate the condition of victims of human smuggling in fraud model.

Aryo was smuggled to Malaysia by *tongkang kayu* or known as wooden ship with other 70 people. They were being sold to a *tauke* in Malaysia. The boat was actually considered overloaded by the passengers so there was a big possibility to be sunk in the sea. Most of the passengers were the victims of fraud and few of them were died of illness or had sea accident. In the Malacca's lane, generally, the victims consist of Javanese origin people with low education background and skill. Commonly, they are employed at a location that does not demand special skills such as in menial works.¹⁶

The following table explains how the smuggling process from Indonesia to Malaysia:

Diagram 1
Fraud Model (Indonesia to Malaysia)



As depicted in the above diagram, to efface smuggling trace, the victims of the smuggling in fraud model are being sent from one agent to another agent. The swap can happen more than two times until the victims arrive at the hand of the main person. In this case, the agents have significant role such as looking for, loading, gathering the victims and connecting the victims to the main actors of the smuggling. The means of smuggling is not only using traditional ships, but also it includes big ships of the high class entrepreneurs at a very expensive rental cost. An agent which just shipped people from Java by using *Roro*¹⁷ to *TBK* states.¹⁸

At Malacca, the smuggling by using the fraud model is considered as a well-organized smuggling network. In some cases, it is difficult to differ whether the smuggling people are the customers or the victims as sometimes they are “voluntarily” to be smuggled. In this case, they are aware that they will be victims but they do request to be smuggled for job reasons.

¹⁶ Deep Interview with Mas Aryo as user of smuggling service on Sunday, May 26 2013

¹⁷ Large ship transporting cars and motorcycles from Riau to the surrounding islands such as TBK, Bengkalis, Selat Panjang and others.

¹⁸ Interview with Rasidin (former tekong), at Tanjung Balai Karimun, Jun 10 2013

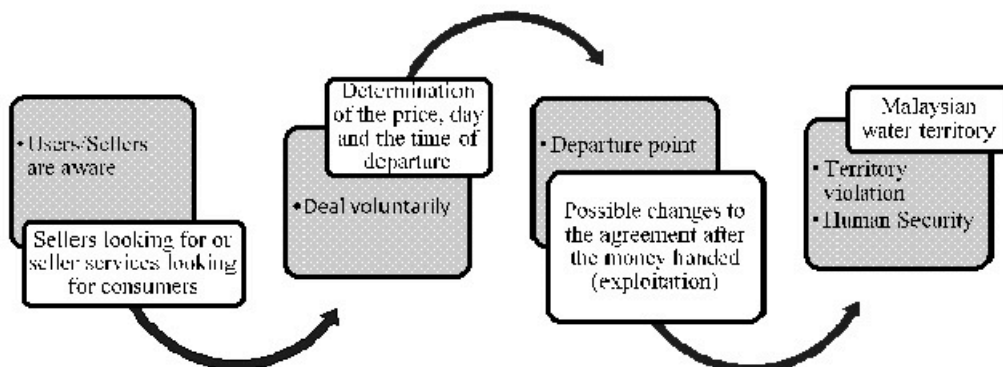
Demand Model

The human smuggling has existed in Malacca, Malaysia for quite long time. It is a spot where the agents receive the smuggled people. Ironically, this kind of activity has been performed from generation to generation. The smuggling ventures have less awareness that they perform crime by doing the business. The term of “human smuggling” never exists in their life. The strategic position of their residence, the high profit and demand of human labor’s needs have become the supporting factor for the traditional sea transport agents living in Malacca to run the business.

En Azhar; a person who used to work for a traditional sea transportation agent, is one of a representative examples in the case of human smuggling as he worked in this area because of the increasing demand in his environment. When the study was conducted, he stated that he has already retired from the job. He worked in the business for 22 years and not even once the local security officers pursued him. He earned around RM 600-800 for smuggling a person to Malaysia depending on the ability of the service users.¹⁹

The following chart provides further explanation for the schemes of smuggling between Indonesia and Malaysia seen in demand model.

Diagram 2
Demand Model (Malaysia to Indonesia)



An Azhar, as one of the actors in this smuggling business, does not see himself as the part of the crime. He stated that the community around him has nurtured the habit of “smuggling” people so that this activity is not considered as a crime. An Azhar and the people around him justify that what they have done is based on the demand of the clients and they have done the business as a side job.

Necessity Model

The human smuggling is a multifunction indication in which it can be a means to save a person or a group of people who do not receive their rights or services properly in their home country. Mr. Kasim, an Indonesian originally from East Java, once has used the service from the smuggling agent to bring him back home to Indonesia. He stated that he is also one of the victims of deception when he was looking for the job to Malaysia. Despite of his unpleasant experience, he still prefers to use the service from the smuggling agent.

¹⁹ Interview with Mr. Azhar, service provider (tekong) from Malaysia, Kuala Lumpur, May 24 2013

The “bribe” money or in Indonesian it is known as “uang tunjuk” is a sum of money which has to be shown by the Indonesian workers to the Indonesian immigration staffs at Dumai. It is also common for them to give tips to the immigration staffs at Indonesian or Malaysian immigration office. Actually, both of the parties are reluctant to call the money as a bribe as the amount of it is not that much according to their opinion. However, the tips, despite of the small amount of it, has an important role for the smugglers.²⁰

Recently, Mr. Kasim works as a daily cleaning service at Hulu, Langat. He and his colleagues work in the morning until 5 p.m. There is a pickup-drop service; a truck; for him and his colleagues to go working and home. Mr. Kasim is an example of an Indonesian citizen who actually deserves for protection from the Indonesian government, however, as he does not receive it, he inevitably involves in a human smuggling circle. The uncertainty of Indonesian government’s service to the citizen has been mentioned as one of the factors which trigger a citizen to involve in a human smuggling network.

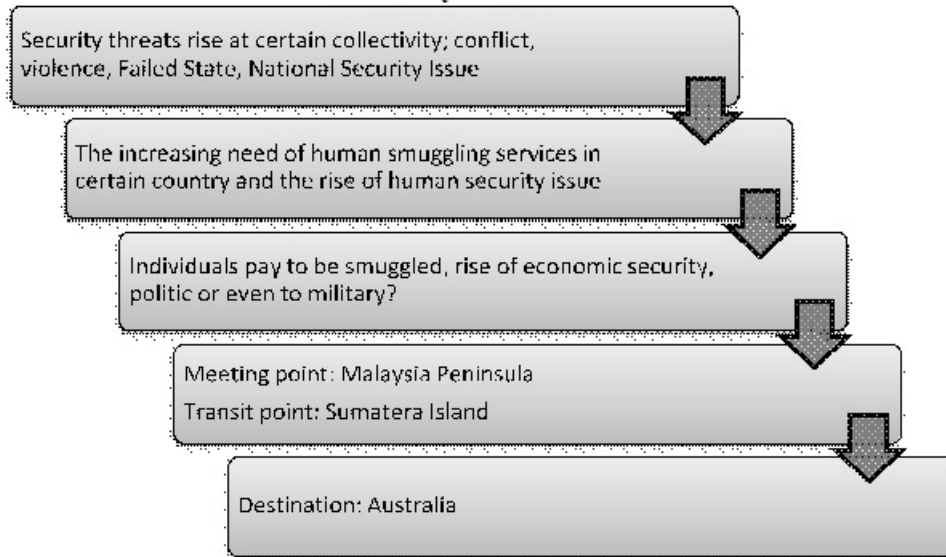
It means that both of the actors, the customers and the agents earn the benefits. In performing all of the procedures of human smuggling, both of them are aware of their own risk. They also consider the commercial factor when they perform the procedures. Both of them can be called as criminal in term of violating the law in the origin or destination country, conversely, the necessity model clarifies this kind of mutual relationship. The innocence and force exist in this network are often being used by the organized agents to fool the innocence people.

The thing to be considered in Mr. Kasim’s case is that as the costumer who uses the service of human smuggling agent, he has lost his right as a citizen of certain country which is also supposed to be protected by the destination country. By taking that kind of way, Mr. Kasim or other similar people are prone to be the victim of violence that possibly happens in their departure process or even in the destination country. The better salary in the neighborhood countries lead them to have less fear of the risk that they might have encountered in the future.

The origins of the smugglers with the necessity needs model in Malacca Strait still remain indefinite. The fact shows that the number of smuggling and the smuggled-people are raising and varied each year. This following chart can be used as a basis to observe more about the source elements, actors and security staffs which are related in this model.

²⁰ Interviews with smuggling service users (Pak Kasim), an Indonesian citizen aged 65 from East Java, had several times using Tekong services of smugglers to take him to Dumai before traveling to East Java. Baranang, Hulu Langat, May 25 2013.

Diagram 3
Necessity Model



From the chart, the assumption that the smugglers are the victim of violence is not only relevant in connection with the agent, but also it is relevant to its connection with the powers beyond the human smuggling networks. The vulnerable security condition and security threat experienced by a community in a country is seen as the root problem of the smuggling in this model. In Malacca, the smuggling agents smuggle people who look for economic security. However, it is also found that the smuggling people are also in conflicted and violent condition from the origin countries or to the destination countries. This model may also have military security purpose and it still requires further study.

National Security Threat Analysis

As the region borders at sea, Malacca strait is a strategic area to test the ability of the countries to keep the sovereignty and security of their people. However, the human smuggling is still happened in that area and even it is not easy to catch the actors. One of the Malaysian agents states that the equipment used by the smugglers from Malaysia are sophisticated.²¹

The mentioned agent above knows the water territorial borders of Indonesia very well. He knows well which areas belong to Indonesia or Malaysia and which one is categorized as international area. He states that he often plays ‘hide and seek’ with sea patrols but he is never being caught. There is also a way to negotiate between the smuggling agents and local bureaucracy in handling the people’s mobility out of the country matter.

The newest chasing case was the casing that was done by the Malaysian police on 17th and 20th of May 2013. They arrested a fisherman’s boat which was about to smuggle humans via *Tanjung Lumbuk*, Selangor. Malaysian Maritime area (DM 5) Kuala Linggi, Malacca arrested the boat and they took it to the seaport DM 5. The next case was on May 20th, the smugglers were trying to smuggle cigarettes worth RM870,000, equivalent to Rp.2,784,000,000. However, they were arrested at *Pulai* and *Benut* River at *Batu Pahat* and *Pontian Johor*.

²¹ An interview with Mr. Burhan, Sunday June 9, 2013, Kukup seaport , Malacca.

The less sophisticated security device in Indonesia is seen as one of the significant factors being neglected by the Indonesian officers. The “grey” area is also a representative area to lead the conflict especially when the Indonesian government increases the security level. In this area, the conflict often happens. The security officers both from Indonesia or Malaysia claim that the grey area is the sovereignty of their country. Increasing the security of the country tends to be seen as a provocative action and treat to the others’ sovereignty. One of the interviewed police officers in water area of *Dumai* claimed that they only do patrol if they receive a command.²²

The smuggling may happen as the decrease of respect to the destination country. A destination country is considered as a country which has weak law enforcement so that the transgression of the law is a possible thing. Meanwhile, in the origin country, the smuggling happens as the poverty and security threat. The Malaysian agents’ representative stated that he was brave enough to enter Indonesian water area as he realized about the inconstant patrol done by the Indonesian water police and the easily deceived marine police.

The damage of regional security occurs due to the rise of smuggling activities. As a result, the smugglers have no fear to perform their action as the local officers have less power to stop the smuggling activity. In addition, there is also damage to cultural and social security as the effect of commercialism in which each individual has an assumption that he/she has power over his/her survival and rights to do individual efforts.

Meanwhile, the political security damage emerges as a result of security officers’ perception when there is a smuggling case. It also happens as the facts that government’s apparatus are easily corrupted and fooled. Government that is responsible for securing rights has ignored the rights of the citizens so the nation’s credibility as the owner of the sovereignty rights is getting lower.

By examining cases, it can be inferred that the root of human smuggling problem is not only found on the network or human smuggling organizations. This problem occurs because the State has failed to provide simple and affordable public services to all its citizens. This problem also arises in regard to the State Government which does not care about the problems of integrity of security and vulnerable security threats

Until 1990s, the guardianship at Malacca Strait was still very weak, barely there was no security control found there. It is believed that the condition was the main triggering factor of human smuggling. Few years later (in 2000), the countries in the region started to give attention to the problems. The slow response is deemed reasonable by the local security apparatus because there are many things to secure and it is not only the sprawling sea area with its many islands that should be safeguarded but also rivers which go through the hinterland with its undeveloped land and inadequate security tools. The security apparatus in lower government level seems having less confidence that they will be able to combat these “diseases” without the support of military and financial power. This understanding is supported by assuming that the effort to combat this “disease” leads to security dilemma.

²² Interview with the Indonesian Navy, Captain Budi Purwanto S.T. and Dumai’s water police, AKP Hanafi, Thursday June 13, 2013.

Conclusion

Human smuggling problem is a complex issue as it involves many actors in diverse range. It cannot be solved by the conservative security techniques relying on the strength of military and technology. It requires a new security technology which engages the government responsibility and ethics converge in it. State partnerships in tackling the problem of human smuggling are not seen as a promising aspect to solve the problem as the power of partnership countries is asymmetrical. If one of the partnership countries is having a weak power, then the security cooperation will be developed into other forms of military intervention and a more powerful country intervention particularly in the domestic affairs.

In the globalization era, there is no single security matter that can be solved by a State on its own. Definitely, a security affair involves many parties and they need to cope with. Under these conditions, the defensive strategy, however, should be a choice, to achieve national security and to confront the security threats which can result trepidation effects. The community's view of a country plays an important role for types of human smuggling crimes. According to the agents, the rise of human smuggling activities happens because of the limitation of the country's ability in maintaining its sovereignty.

The best security policy refers to human security in term of its ability to secure all aspects which are able to reduce the quality of human life in the country. Therefore, enhancing country's military power is not the best solution to solve the human smuggling problems. The concept of holistic security and defense should be considered more regarding to the efforts to combat the transnational crime of human trafficking.

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