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Trials of People Smugglers in Indonesia: 2007-2012

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Front Cover Image: Wooden boats in the harbour of Pelabuhan Ratu.

Photograph courtesy of Antje Missbach.

TRIALS OF PEOPLE SMUGGLERS IN INDONESIA: 2007-2012¹

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ABSTRACT

This policy paper addresses the critical need for greater knowledge and understanding of how the contemporary Indonesian legal system is dealing with people smuggling. It primarily presents the findings of a survey of court cases from May 2011 to December 2012, in the first year and a half of the operation of Law 6/2011 on Immigration. The paper identifies patterns in court cases in terms of the location of people smuggling operations, profiles of the accused, the criminal charges laid against them, and the severity of penalties handed down by the courts. The paper argues that any efforts to increase the scope and depth of such cooperation between Australia and Indonesia must take into account the progress made by law enforcement agencies in prosecuting people smugglers in Indonesian courts, as well as the challenges they confront.

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- 1 The authors would like to thank Professor Tim Lindsey and Dr David McRae for their comments on an earlier version of this paper. Special thanks to Dr McRae for providing us with court documents from Bau-Bau. All translations in this report are by the authors. Any errors remain the authors' own.
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The need for the Australian government to review its policy on asylum seekers, and, by implication, people smugglers, reached crisis level in 2012. This led to the establishment of an independent panel of three experts known as the Houston Commission in June 2012. The Commission conducted a wide consultation process, and quickly recommended that, among other things, the Australian government prioritise bilateral cooperation with Indonesia on people smuggling issues. The Commission's final report, released 13 August 2012, identified three particular aspects of people smuggling policy as of particular relevance to Australia-Indonesia relations.⁴

The first, a proposed increase in the allocation of humanitarian resettlement places in Indonesia, is a welcome recommendation and long overdue. The second aspect concerned the need to reform Australian laws and procedures relating to the crews of unlawful boat arrivals from Indonesia and minors travelling on the boats. This was in response to concerns about the growing numbers of Indonesians convicted in Australia, as well as concerns about the accuracy of age testing and concerns over the minimum mandatory sentence.⁵ This has received a significant amount of attention.

The third key issue – increasing cooperation with Indonesia in terms of joint border control, search and rescue efforts, and law enforcement – is equally important. This requires long-term commitment from both Australia and Indonesia. In particular, the Houston report suggested that Indonesian boat crew convicted in Australia could serve their sentence in Indonesia, or might even be returned to Indonesia to be tried there.⁶ This paper responds to this recommendation. It addresses the critical need for better understanding of how Indonesia is dealing with people smuggling by surveying court cases in the first year and a half of the operation of Indonesia's new Law 6/2011 on Immigration (May 2011 until December 2012). More specifically, this paper argues that any efforts to increase the scope and depth of such cooperation must take into account the progress made by, and the challenges confronting, law enforcement agencies in prosecuting people smugglers in Indonesian courts.⁷

There are a growing number of prosecutions for the criminal offence of people smuggling now being handled by the Indonesian legal system. In this paper, we have drawn on a large sample of data, although we do not claim that it is comprehensive, because most Indonesian court decisions are not available online. We were therefore limited in part by the willingness of members of the courts, the police force and the public prosecution service to

4 Report of the Expert Panel on Asylum Seekers, August 2012, Australian Government ('Houston Report').

5 For example, see Charles Martin (2011) 'Scum of the Earth? People Smuggling Prosecutions in Australia 2008-2011', *University of Queensland Research Paper*.

6 See Houston Report, 2012: 43.

7 We use the term 'people smuggling' because it is the direct translation of the term *penyelundupan manusia*, used in Indonesian legislation.

share this information with us.⁸ Further, we are aware that although large numbers of people are being arrested for the offence of people smuggling, some of their cases never reach the courts. We were therefore only able to consider those cases that reached the courts and produced decisions we could access.

Through the survey of cases contained in this paper we identify patterns in cases being brought before the courts in terms of the location of people smuggling operations, profiles of the accused, the criminal charges laid against them, and the severity of penalties handed down by the courts. In doing so, we demonstrate that some judges and prosecutors have disregarded the new penalty range of 5 to 15 years imprisonment stipulated by art 120(1) of Law 6/2011 on Immigration, which we explain in greater detail below. This is problematic as it creates uncertainty in the application of the law, and reduces its deterrent effect. On the other hand, given that many of the people caught so far played a minor role in people smuggling operations, such as drivers and facilitators, it is questionable whether a 5 year minimum term is a suitable penalty. Whether Indonesian judges retain discretion in sentencing people smugglers therefore requires clarification.⁹

We begin by providing a brief overview of the legislative framework as it addresses people smuggling, and highlight the significant changes that have taken place. We consider arrests and prosecutions for various criminal offences of people smugglers between 2007 and 2011, prior to legislative reform.¹⁰ We then highlight key trends in cases brought to the courts after the reforms of May 2011 and December 2012. Finally, we illustrate the implementation of Law 6/2011 by analysing the Trenggalek Case, in which seven people – including four military officers – were tried and convicted for the offence of people smuggling. This case is significant because it is the first time military personnel have been convicted for such an offence, and it demonstrates the potential of the law to address complicity in people smuggling by law enforcement and government agencies. The Appendix provides further information for the reader, including tables containing details of court cases under Law 9/1992 on Immigration (2007-2011); Law 6/2011 on Immigration (2011-2012); and Law 17/2008 on Shipping.¹¹

8 The information relied on in this paper was primarily collected by Antje Missbach while on field research in Indonesia in 2011-2012.

9 The Australian government is also reconsidering whether mandatory sentencing is necessary or useful in cases of people smuggling: see Houston Report, 2012: 43.

10 This time period was chosen to provide an overview of the 5 years prior to the introduction of the new reforms, as well as because a large number of court decisions of the district courts only became available online in mid to late 2000s.

11 Law 17/2008 is sometimes used as an alternative basis to the immigration laws to sentence people smugglers.

LEGISLATIVE OVERVIEW

The legal framework in Indonesia that addresses people smuggling has undergone significant change since 2000, due to both international and regional developments, as well as domestic reforms. In December 2000, Indonesia became a signatory to the United Nations Convention Against Transnational Organised Crime (UNATOC). In 2002, a multilateral framework was established to address people smuggling, known as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.¹² The Bali Process is co-chaired by the Indonesian and Australian governments and aims to promote awareness and cooperation in the region on people smuggling, trafficking and other forms of irregular migration. Members of the Bali Process commit to suppress transnational crimes, including the smuggling of migrants and asylum seekers, and work towards the Regional Cooperation Framework. The Bali Process has hosted a Ministerial Conference on five occasions since 2002, with the most recent taking place in April 2013.

In 2009, Indonesia's national legislature passed two statutes regarding international conventions on organised crime and people smuggling. The first, Law 5/2009, ratified the United Nations Convention Against Transnational Organised Crime (UNCATOC).¹³ The second, Law 15/2009, ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UNCATOC Protocol.¹⁴ The UNCATOC Protocol is particularly important because it places numerous obligations on states in relation to people smuggling. Under this Protocol, Indonesia is required to commit to international cooperation in order to address people smuggling. It also is obliged to make efforts to prevent the smuggling of migrants, and is required to pass legislation to criminalise people smuggling. Through these two statutes, the Conventions became part of Indonesian law.¹⁵ Indonesia is not, however, a party to either the United Nations Convention on Refugees 1951 or the related 1967 Protocol, although it does allow the United Nations High Commissioner for Refugees (UNHCR) to assess and process asylum seekers. In 2012, the Indonesian National Human Rights Commission (Komnas HAM) urged the Indonesian government to ratify the United Nations Convention on Refugees, although it has not yet done so.¹⁶

Before 2011, there was no specific offence for people smuggling in Indonesia. Rather, the prosecutor would usually try a person arrested for people smuggling under one of

12 See Bali Process at <http://www.baliprocess.net/>.

13 Law 5/2009 on the ratification of the United Nations Convention Against Transnational Organised Crime.

14 Law 15/2009 on the ratification of the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UNCATOC Protocol.

15 Law 24/2000 on International Treaties, art 15(2).

16 Although the government of President Susilo Bambang Yudhoyono has twice stated its intention to sign the 1951 Refugee Convention in its national legislation program (*Prolegnas*), no steps have been taken to do so at the time of writing.

several general immigration offences established by Law 9/1992 on Immigration (see Table 1 below). For example, failure to pass through the Immigration Office and misusing or overstaying a visa were punishable with a prison term or a fine. The offences of assisting an illegal foreigner, or returning to Indonesia illegally, were also punishable with a prison term and a fine.

We discuss court cases brought under these provisions in the section below on court trials from 2007 to 2011. If boat crew were caught at sea in Indonesian territorial waters with asylum seekers on board and lacking the necessary permits to travel, offences under Law 17/2008 on Shipping could be relied upon. The main provision among these is art 323(1), which makes it a criminal offence for the captain of a boat to sail without the relevant permit and attracts up to 5 years prison or a fine of Rp 600 million. We are aware of at least 4 cases that have been brought under this provision (see Table 5 in Appendix).

Table 1: Offences under Law 9/1992 on Immigration [obsolete since 5 May 2011]

Art 48(1):	A person who enters or exits Indonesia without being examined by an Immigration Official at an Immigration Office is liable to up to 3 years prison or fined up to Rp 15 million (AU\$1,490).
Art 50:	A foreigner who intentionally misuses or engages in activities that do not comply with the purpose of the immigration permission granted to him or her, is liable to up to 5 years prison or fined up to Rp 25 million (AU\$2,490).
Art 52:	If a foreigner's immigration permit has expired and they still reside in Indonesia 60 days from the date of the expiry of their permit, they are liable to up to 5 years prison or fined up to Rp 25 million (AU\$2,490).
Art 53:	A foreigner who resides in Indonesia illegally or who has previously been expelled or deported and returns to Indonesia illegally, is liable to up to 6 years prison and/or fined up to Rp 30 million (AU\$2,990)
Art 54:	<p>A person who intentionally hides, protects, provides accommodation, gives practical assistance to or employs a foreigner, where it is known or suspected that:</p> <ul style="list-style-type: none"> a. the foreigner has previously been banned or deported and has been in Indonesia before illegally, is liable to up to 6 years prison and/or a fine of up to Rp 30 million (AU\$2,990); b. the foreigner is in Indonesia illegally, is liable to up to 5 years prison and/or a maximum fine of Rp 25 million (AU\$2,490); c. the foreigner's immigration permit has expired, is liable to up to 1 year prison or a fine of up to Rp 5 million (AU\$500).

More significant changes were introduced in 2011 with the passage of the new Law 6/2011

on Immigration, which introduced the criminal offence of people smuggling.¹⁷ One of the reasons for reform of the government's immigration policies was the inadequacy of Law 9/1992 on Immigration. The government admitted that the limitations of Law 9/1992 had led to 'an increase in international and transnational crimes, such as illegal immigration, people smuggling, human trafficking, terrorism, narcotics and money laundering'.¹⁸ The passage of Law 6/2011 was also intended to meet Indonesia's international obligations and responsibilities under the Protocol, as well as its regional commitments on issues such as people smuggling.

Law 6/2011 establishes several new offences, some of a general nature and others specific to people smuggling. It also significantly increased the penalties, as set out in Table 2 below. In terms of criminal offences for irregular migrants and foreign people smugglers, art 119(1) makes it an offence punishable with a maximum sentence of 5 years prison and a fine of Rp 500 million if a foreigner stays in Indonesia without a valid travel document and visa. It is also an offence for a foreigner to knowingly use a false travel document.

Table 2: Offences under Law 6/2011 on Immigration

Art 119:	<ol style="list-style-type: none"> 1. A foreigner who enters and/or stays in Indonesia without Travel Documents and a valid visa and remains as intended in art 8 above [on entering and staying in Indonesia] is liable to up to 5 years prison and a fine of up to Rp 500 million (AU\$49,800). 2. A foreigner who intentionally uses a Travel Document, but it is known or suspected that the Travel Document is false or has been falsified is liable to up to 5 years prison and a fine of up to Rp 500 million (AU\$49,800).
Art 120:	<ol style="list-style-type: none"> 1. A person who acts with the intention of making a profit, either directly or indirectly, for themselves or for others, by taking a person or group of people, either organised or unorganised, or instructs others to take a person or group of people, either organised or unorganised, who have no legal right to enter or exit Indonesian territory, or outside Indonesian territory and/or into another country, and the person mentioned does not have a right to enter the territory legally, either by using legal documents and false documents, or without a Travel Document, either through immigration or not, is liable for People Smuggling with a minimum prison term of 5 years and a maximum of 15 years, and a fine of a of minimum of Rp 500 million and a maximum of Rp 1,500 million

¹⁷ Many of the provisions are similar to the recommendations in the UN Model Law Against the Smuggling of Migrants 2010 (Vienna: UN Office on Drugs and Crime).

¹⁸ See the Elucidation to Law 6/2011 on Immigration.

	(AU\$49,800-\$149,500). 2. An attempt to act as a People Smuggler is liable for the same penalty as set out in sub-section (1) above.
Art 124:	A person who intentionally hides, protects, provides accommodation, gives practical assistance to or employs a foreigner, when it is known or suspected that: 1. the foreigner is in Indonesia illegally, is liable to a maximum prison sentence of 2 years and/or a maximum fine of Rp 200 million (AU\$19,900); 2. the foreigner's immigration permit has expired, is liable to a maximum prison sentence of 3 years or a maximum fine of Rp 25 million (AU\$2,490).

The main offence of people smuggling is contained in art 120, as set out in the table above. It carries a severe penalty of between 5 to 15 years prison and a fine that ranges from a minimum of Rp 500 million (AU\$49,800) to a maximum of Rp 1,500 million (AU\$149,500). This offence includes an *attempt* to smuggle people. This provision is now the primary offence relied upon by Indonesian prosecutors to convict people smugglers. We discuss below the elements of this offence as interpreted by the court in the Trenggalek Case.

Article 124 of Law 6/2011 also makes it an offence to assist illegal migrants. This is the same as art 54 of the old Law 9/1992, although the penalties have significantly increased. The offence of assisting an illegal migrant may now attract a prison term of 2 years and a fine of up to Rp 200 million (AU\$19,900). The authorities may detain a person suspected of these offences.¹⁹

We now turn to consider arrests and prosecutions that were made prior to May 2011 under Law 9/1992, and then how patterns in court cases have changed since the introduction of Law 6/2011.

ARRESTS, INVESTIGATIONS AND PROSECUTIONS: 2007-2011

People smuggling cases are usually tried at first instance in Indonesia's District Courts (*Pengadilan Negeri*), the first instance general courts in the judicial hierarchy. The trends we have identified in arrests, criminal investigations and prosecutions of people smugglers between 2007 and May 2011 provide a picture of how these cases have been handled law enforcement agencies and the courts. We show that although an increasing number of individuals were arrested, few cases proceeded to the courts. We explain some of the reasons for this, and then examine patterns in the court trials that we were able to verify.

¹⁹ Law 6/2011 on Immigration, art 109.

There are several state agencies that may be involved in the arrest of people smugglers in Indonesia. While arrests are usually conducted by the police, other authorities (for example, the military, the navy, and immigration officials) may also be involved. The Criminal Division of the National Police²⁰ compiled a list of arrests of people smugglers and 'irregular' migrants²¹ that took place between 2007 and May 2011. Both Indonesian nationals and foreigners are involved in people smuggling networks in Indonesia.²² Table 3 shows that the majority of those arrested for people smuggling were Indonesian, although there were also a number of accused from countries such as Pakistan and Afghanistan. This table should not be taken as complete, however. Our data demonstrates, for example, that there was, in fact, more than one arrest and court case in 2007. Further, we have been unable to verify how many of these cases actually proceeded to court, although the evidence we have been able to gather certainly suggests not all of them did.

Table 3: Number of investigations of people smugglers 2007-2011²³

Year	Number of cases	Nationality of accused
2007	1 case	1 Sri Lankan
2008	3 cases	2 Indonesians, 1 Pakistani, 1 Afghani
2009	15 cases	23 Indonesians, 7 Pakistanis, 2 Afghanis
2010	24 cases	30 Indonesians, 2 Afghanis, 1 Pakistani, 1 American, 1 Iraqi
2011	14 cases	18 people (nationality unknown)

There are many possible reasons why investigations did not proceed to court. The police may not have had enough evidence to charge the accused. The accused may have agreed to act as a witness in another criminal trial in exchange for charges being dropped. The reality of corruption in the Indonesian legal system below the Supreme Court (*Mahkamah*

20 This body is known as Bareskrim (Badan Reserse Kriminal Polri).

21 The term 'irregular migrant' is used here to include registered asylum seekers and recognised refugees, as well as rejected asylum seekers, undocumented migrants and people with valid or expired tourist or student visas.

22 See A Missbach and F Sinanu (2011) "The Scum of the Earth"? Foreign People Smugglers and Their Local Counterparts in Indonesia', 30(4) *Journal of Current Southeast Asian Affairs* 57-87.

23 This table is a modified version of one compiled by Bareskrim Jakarta 2011. This table does not provide information about whether any of the non-Indonesian smugglers were also registered as asylum seekers with the UNHCR, as may have been the case.

Agung) also means that bribery cannot be ruled out.²⁴

Further, in the past some cases have been the subject of requests for extradition from various countries, including Australia.²⁵ In situations where the request for extradition of an accused was met, the suspected people smuggler was not put on trial in Indonesia. For example, in 2001, Australia requested the extradition of Abu Quassey, an Egyptian accused of people smuggling in Indonesia. Although the request failed, and Quassey was instead deported to Egypt, he eventually stood trial there. In December 2003, he was convicted by a court in Egypt for his role in a people smuggling operation that led to the loss of 353 lives on the fatal SIEVX voyage.²⁶

There are therefore a range of reasons why individuals arrested on charges of people smuggling have not been tried in Indonesia. As mentioned, some were, and Table 5 (see Appendix) sets out 15 cases that reached court between 2007 and 2011, in which 5 of the accused were foreigners, all men. The province with the highest number of cases was Southeast Sulawesi (5), followed by the provinces of Banten (4), West Java (3), East Nusa Tenggara (2) and Jakarta (1). These cases overlap, however, as some of the people smugglers involved were working in cooperation, for example, Chandra Babu and Abraham Lauhenapessy; Sayed Abbas Azad and Asadullah bin Khuda Nazar; and Heider Ali and Abdul Khidir Basyir (see Table 5 in Appendix).

The role these individuals played in people smuggling operations varied. In the Appendix, we rely on the different categories as developed by Içduygu and Toktas (2002). A journey for asylum seekers from their home country to their final destination may include contact with people who play the role of 'arrangers' to oversee the operation; 'transporters' who arrange the journey by land, air or sea and their 'crew'; and 'support staff' who arrange matters such as food and accommodation. There are also, of course, 'debt collectors' and 'money movers' who manage the financial transactions involved. Other crucial actors in the process in Indonesia are 'protectors', that is, government officials who ensure the smuggling operation remains undetected. These actors have the greatest potential to undermine the legal prosecution of people smugglers.²⁷

There are several common people smuggling routes. Map 1 below indicates the most

24 F Lolo, 'Bayar Mahal Untuk Jadi Imigran Gelap' [High Costs of Becoming an Illegal Immigrant] (2012) *REQUISITOIRE, Law Enforcement and Justice Magazine*, 18: 31.

25 See Australia-Indonesia Extradition Treaty (1992); Extradition Act 1998 (Australia); Extradition (Indonesia) Regulations (Australia); and Law 1/1979 on Extradition (Indonesia).

26 Abu Quassey was sentenced to 5 years and 3 months in prison. For media coverage of Abu Quassey's arrest, extradition and trial see <http://sievx.com/articles/AbuQuassey.shtml#Indonesia>.

27 See A Içduygu and S Toktas (2002), 'How do Smuggling and Trafficking Operate via Irregular Border Crossings in the Middle East? Evidence from Fieldwork in Turkey', 40(6) *International Migration* 25-54: 36.

common routes used for irregular entry to, and exit from, Indonesia. While most Afghani, Pakistani, Iraqi and Irani asylum seekers transit first in Malaysia before arriving in Indonesia, most asylum seekers from countries such as Sri Lanka and Burma/Myanmar enter directly, arriving by boat in the northern parts of Sumatra, particularly Aceh. The map also in portrays the most common direction for asylum seekers movement within Indonesia – from west to east. Until 2011, the Nusa Tenggara Timur was one of the most frequently used departure areas, because journeys from there to Australia’s Ashmore Reef are short. As a result of increased border control in eastern Indonesia, people smugglers now more often depart from the shores of Southern Java and Southern Sulawesi. However, trips from Java and Sulawesi to their usual destination, Christmas Island, are longer and usually more risky.

Map 1: Common People Smuggling Routes in Indonesia



Given the varied tasks smugglers have to fulfil, organising a people smuggling operation requires local supporters and helpers as well as recruiters, who are often of the same nationality or ethnicity as the asylum seekers in order to create trust among potential clients. There is little information available about how foreign smugglers and Indonesian counterparts forge their business links. Anecdotal evidence suggests, however, that it is often spontaneous and coincidental. For example, in June 2006, Chandra Babu, a Sri Lankan national, visited Pasar Baru, Jakarta, to purchase a boat. While there, it appears he happened to be introduced to Abraham Lauhenapessy, an Indonesian national. Given Abraham’s past experience organising three boatloads of Iraqis to Australia, Chandra made him an advance payment of Rp 90 million (AU\$8,900) in return for his assistance in a

planned people smuggling operation.²⁸

Even if asylum seekers know someone willing to transport them to Australia, it is often a challenge to obtain the boats and find crew to man them. Indonesians crew members are often lured into people smuggling by the relatively huge amounts of money being offered. For example, two young crew members (aged 15 and 16 years at the time of the journey), who had been imprisoned in Darwin for 1 year and 4 months but returned to Indonesia after their sentence was served, claimed that they had been offered Rp 5 million (AU\$500) per person for one trip.²⁹ This is equivalent to 3 to 4 months average pay for unskilled crew members but they never received full payment because of their arrest and imprisonment. Both boys stated that they had, in fact, only received an initial payment of Rp 250,000 (AU\$25). As documents from Indonesian courts suggest, other low-profile drivers and boat crew involved in people smuggling also earned minimal wages, despite higher promises made to them by recruiters.

These cases also demonstrate that the accused were all men, with the majority convicted of misusing a visa, overstaying their visa, or assisting a person who is in Indonesia illegally (arts 50, 52 or 54 of Law 9/1992 on Immigration). The average sentence sought by the prosecution was 2 and a half years prison, although the maximum sentence was 5 years. In some cases, the prosecution also sought a fine that ranged between Rp 1 million to 30 million (AU\$100 to \$2,990). The courts in these cases often imposed a very short prison sentence of just 4 months, although in some cases the accused was sentenced to 2 and a half years. In general, sentences for people smuggling have rarely exceeded 3 years.

One of the most prominent Indonesian smugglers to have appeared in court was Ali Cobra, a 35-year-old Indonesian man from Rote Island. Among other operations, Ali Cobra was involved in organising a break-out of 18 men who were held at the immigration detention centre in Kupang. In January 2009, Ali Cobra organised their collection from the detention centre and the provision of a small boat that was supposed to take the escapees to Rote. However, bad weather caused the boat to sink and 9 people died. Ali Cobra was arrested several months later in May 2009 while transporting another group of irregular migrants. The prosecutor sought 4 years prison under art 54(b) of Law 9/1992 for providing assistance to illegal foreigners in Indonesia. In September 2009, the judge sentenced him to just 2 years and 6 months prison, although the minimum sentence for this crime was 5 years.³⁰

Another prominent people smuggling case involved Sayed Abbas, an ethnic Hazara from Afghanistan, who arrived in Indonesia in the early 2000s. After his claims for protection

28 *Mahkamah Agung Putusan Nomor No 809K/Pid.Sus/2008* [Supreme Court Decision No 809K/Pid. Sus/2008 in the case of Abraham Louhenapessy alias Bram].

29 Interview with boat crew by Antje Missbach, 29 April 2012, in Rote Island.

30 *Pengadilan Negeri Kupang Putusan Nomor 358/Pid.B/2009/PN.KPG* [District Court of Kupang Decision No 358/Pid.B/2009/PN.KPG, in the case of La Basa Ali].

were rejected multiple times by the UNHCR, he stayed on in Indonesia and married an Indonesian woman. Sayed became involved in people smuggling, at first working for other smugglers and then later developing his own business. In November 2008, he was arrested for the first time for people smuggling in Banten, although he was later acquitted at first instance in the Serang District Court.³¹ On appeal by the prosecution, he was found guilty and sentenced to 2 years and 6 months in prison and ordered to pay a fine of Rp 5 million (AU\$500). This was a rather lenient sentence given the significant extent of his involvement in the industry and the potential maximum fine of Rp 25 million (AU\$2,490).³² There are also rumours that both convicted smugglers remained in business during and after their release from prison.

There are several reasons why the maximum penalty was neither sought by the prosecutor nor awarded by the court in these cases. Cases are affected by the corrupt and illegal practises that notoriously plague the Indonesian judiciary, particularly at the lower levels.³³ In the past, these kinds of immigration offences were generally not regarded as serious crimes but rather as petty offences that did not cause major damage to the reputation or well-being of society. This indicates that one of the reasons for the introduction of the new Law 6/2011 was growing domestic concern that people smuggling is damaging Indonesia's international standing and that it has the potential to harm vulnerable members of society.

THE CRIMINAL OFFENCE OF PEOPLE SMUGGLING: 2011-2012

From May 2011 until December 2012, there were at least 30 prosecutions for people smuggling brought to court under Law 6/2011 (see Table 6, Appendix). This number is significant given there were as few as 15 prosecutions between 2007 and 2011 (see Table 4 below). A large number of these cases were in East Java and West and Central Java, although there were also a number in outer provinces such as West Kalimantan, Riau Islands and East Nusa Tenggara. The reason for the concentration of cases in Java is partly because police are often better equipped there than in the outer islands, which also present greater geographical challenges for the monitoring of people smuggling activities.

31 *Pengadilan Negeri Serang Putusan Nomor 17/Pid.B/2009.PN.Srg.* [District Court of Serang Decision No 17/Pid.B/2009.PN.Srg, in the case of Sayed Abbas Azad bin Sayed Abdul Majid].

32 *Putusan Mahkamah Agung Nomor 2422K/PID.SUS/2009* [Supreme Court Decision No 2422K/PID.SUS/2009, in the case of Sayed Abbas Azad bin Sayed Abdul Majid].

33 On corruption in Indonesian courts, see generally Simon Butt and Tim Lindsey, 'Judicial Mafia: The Courts and State Illegality in Indonesia' in E Aspinall & G van Klinken (eds), *The State and Illegality in Indonesia* (KITLV Press: The Netherlands, 2011) 189-21.

Table 4: Comparison of cases under Law 9/1992 and Law 6/2011 on Immigration

Cases	2007-2011	2011-2012
Total number of cases	15	30
Number of accused	15	38
Location of court	Southeast Sulawesi: 5 Banten: 4 West Java: 3 East Nusa Tenggara: 2 Jakarta: 1	East Java: 11 West Java: 6 West Kalimantan: 4 Riau Islands: 4 Lampung: 2 East Nusa Tenggara: 1 Central Java: 1 Jakarta: 1
Most common offence	Law 9/1992, art 54(b) and 48	Law 6/2011, art 120(1) and (2), and art 124
Range of sentences	2 months to 5 years prison.	2 to 8 years prison and fines from Rp 500 million to 1 trillion. The majority of sentences were the minimum 5 year prison term ¹ with a fine of Rp 500 million.

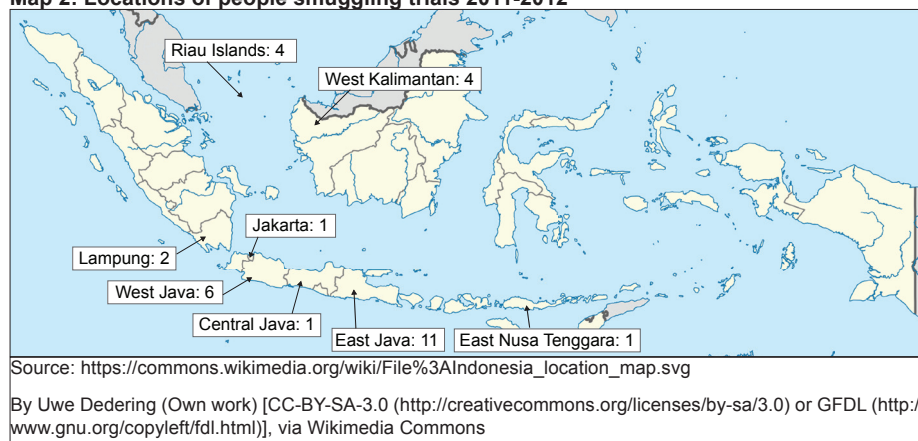
1 There is no clear explanation for sentences that were less than the 5-year minimum except, as discussed below, that judges have seen fit to continue exercising their discretion on a case-by-case basis.

One of the changes introduced by the new Law 6/2011 on Immigration was to give power to immigration officials³⁴ to investigate people smugglers (see generally arts 104-112). This includes the power to receive complaints about suspected people smugglers, obtain evidence, call witnesses and make arrests. The fact that regional immigration departments are often understaffed and less experienced in people smuggling investigations than the police has created rivalry with police investigators. Most of the accused arrested and tried were drivers, boat crew, and 'protectors' who act as security guards. Only one of the accused was a woman. All the men were in their 30s and 40s, although the youngest was 17 and the oldest 55. Indonesian authorities primarily intercepted people smuggling operations, and made arrests, on land rather than at sea. This suggests that land arrests are easier to carry out and that there are less risks for law enforcement officials involved, such as Maritime Police who may be wary of taking asylum seekers onboard in case they are outnumbered or

34 These officials are known as *Penyidik Pegawai Negeri Sipil Keimigrasian* (PPNS, Civil Servant Immigration Investigators).

overpowered. The accused who worked in networks were often arrested and heard in court together, although court decisions were issued separately in some cases.

Map 2: Locations of people smuggling trials 2011-2012



Almost all accused brought to court were found guilty. The only exception was Agus Mustofa (case 27, Table 6), although he was rumoured to be the son of a local *ulama* (Islamic religious leader) and a crowd attended the court to protest his prosecution. This high success rate suggests that prosecutors only bring cases to court where there is clear evidence of guilt. Further, it has not only been those directly involved in people smuggling operations who have been convicted, but also boat owners who knew the reason for the purchase of their boat (see case 7, Table 6).

In terms of sentencing practices, the courts generally awarded shorter prison terms than prosecutors sought. For example, if prosecutors sought 8 years, the courts would order 6 years, or 5 years where prosecutors requested 7. The fine awarded was, however, usually the same as the amount proposed by the prosecutors. There is evidence that in some cases prosecutors sought, and judges ordered, a prison term less than the 5 year minimum sentence fixed for breach of art 120(1). In other cases, although prosecutors sought a prison term of 5 or more years, the courts ordered less than the minimum. For example, in the case of Rifan Sudirman (case 8, Table 6), the prosecutor sought a sentence of 3 years prison and a fine of Rp 250 million (AU\$24,900). On 31 May 2012, he was sentenced to 2 and a half years prison and a fine of Rp 250 million. In another case in 2012, 4 men accused of people smuggling were tried in the Pacitan District Court. The Prosecutor sought a sentence for each of the accused of 6 years prison and a fine of Rp 500 million (AU\$49,800), or an additional 4 months if the accused did not pay. The Court, however, handed down a sentence of just 2 years prison and a fine of Rp 500 million. The question this raises is why prosecutors do not appeal on the grounds that a prison term below 5 years is inconsistent with the sentencing requirements in Law 6/2011. It also suggests that

the judges do not see the 5 year term as stipulated in legislation as a minimum sentence. Instead, judges have, rightly or wrongly, retained discretion in practice and may exercise it in cases where mitigating factors favour the accused. Decisions such as these threaten to create real uncertainty over the application and interpretation of art 120(1).

In discussions with judges and prosecutors about sentences below the minimum legislative requirement, it became clear that many demonstrated leniency because they were aware that the accused were often poor fishermen who had been recruited into people smuggling operations by more powerful organisers. The organisers minimise the risk of being caught by having others, such as fishermen and transporters, do the physical work and run the risk of being found in direct contact with asylum seekers. While they may be offered a relatively significant sum, the boat crew may, in fact, never be paid in full, because the promise of payment is contingent on returning to Indonesia. This is impossible, at least for some years, once an individual is arrested and tried in Australia.

In addition, law enforcement agencies are concerned about the exploitation that takes place within people smuggling operations. The least powerful actors in people smuggling chains are the transporters and boat crew, and yet these are often the only ones arrested and put in prison (whether in Australia or Indonesia). By contrast, those higher up people smuggling chains remain free and make considerable financial gains – in part because they do not pay the boat crew who are arrested. Further, many law enforcement officers in Indonesia perceive that people smuggling is causing significant damage to the Indonesian population by drawing them into criminal networks.

One of the most significant differences between cases brought prior to May 2011 and those after that date is that there are now cases being brought against military officers accused of being involved in people smuggling networks. In the next section, we focus on the Trenggalek Case, one of the few cases in which several military officers have been tried and found guilty of people smuggling.

THE TRENGGALEK CASE: THE MILITARY, SMUGGLING NETWORKS AND THE COURTS

On 17 December 2011, one of the worst maritime disasters involving irregular asylum seekers occurred when a boat with more than 250 people on board sank in a storm about 30km from Trenggalek, East Java.³⁵ Only 37 asylum seekers were rescued after three days at sea. The incident became known in Indonesia as the 'Trenggalek tragedy', because of the large number of victims involved. Moreover, the case received a great deal of public attention because it revealed the complicity of local military officers in smuggling operations.

The leader of the military officers involved in the smuggling operation was Sergeant Ilmun Abdul Said. He is a relative of Aziz Abdul Said, a well-known smuggler from Kupang, West Timor, who has been active since early 2000s. Due to increased border control in West Timor, and the opening of Australia's Christmas Island processing centre in late 2008, many people smugglers shifted their business to Java at this time, including Aziz. This shift was partly because the presence of people from the Middle East in West Timor was very obvious, while in West Java they are harder to detect due to the presence of larger numbers of tourists and business people from the Middle East. Despite the move, Aziz still relied on boat crews from Timor and Rote to conduct his operations.

Since 2008, Sergeant Ilmun, along with four of his military colleagues, Second Sergeant Kornelius Nama, Chief Corporal Karyadi, First Lieutenant Assistant Sosiali and Chief Sergeant Khoirul Anam, were involved in several smuggling operations in the province of East Java, some of which had failed. On their seventh operation, in December 2011, Sergeant Ilmun organised a hiding place for the asylum seekers and accompanied them to the beach, where they boarded small boats that were to take them to the main vessel out at sea. They did this at night and chose this time of year because it was not the fishing season and so the beach was quiet in the evening. He collected payments for the 4 men, which came to a total of Rp 291 million (AU\$291,000). Later, all involved in organising this operation claimed to be following the orders of the 'top man', Aziz Abdul Said.³⁶ They all also made allegations about the involvement of Sayed Abbas, a previously convicted Afghani people smuggler, who was in prison in Jakarta at the time of the incident.³⁷ Despite calls for him to testify in court Sayed never appeared, leading to widespread rumours about

35 Harsaputra, Indra: '200 Missing in Boat Tragedy', *The Jakarta Post*, 19 December 2011, <http://www.thejakartapost.com/news/2011/12/19/200-missing-boat-tragedy.html>.

36 Aziz Abdul Said mentioned in this operation appears to be the same man who was convicted in July 2010 for the offence of assisting illegal Afghans in Indonesia (see Table 5, case 9). If this is true, it indicates both the lack of deterrent effect of the law, and the family connections linking some people smuggling operations.

37 Hari Tri Wasono: 'Mafia Imigran Gelap Lolos dari Persidangan', *Tempo online*, 13 September 2012, <http://www.tempo.co/read/news/2012/09/13/063429314/Mafia-Imigran-Gelap-Lolos-dari-Persidangan>.

collusion among the police, immigration and the judiciary to protect Indonesian smuggling bosses.³⁸

The case of the military officers was heard in the Military Courts, pursuant to Law 31/1997 on the Military Court. The accused were all found guilty under art 120(1) of Law 6/2011. Despite the severity of the incident and the 200 people who died, they received little more than the minimum sentence prescribed by the law. Sergeant Ilmun was sentenced to 6 years prison and a fine of Rp 500 million (AU\$49,800) for organising the operation. Second Sergeant Kornelius Nama received the same punishment. Chief Corporal Karyadi, First Lieutenant Assistant Sosiali, and Chief Sergeant Khoirul Anam, who acted as security guards, were sentenced to 5 years prison and a fine of Rp 500 million (AU\$49,800).³⁹ All were dismissed from the military.

On appeal, Sergeant Ilmun and Second Sergeant Kornelius argued that the sentences they were given were disproportionate to the crime. They claimed that they had been 'sacrificed', while the main military personnel who had coordinated the operation had not been arrested, although no names were mentioned in the court documents. In Kornelius' words, 'There are many people smuggling networks with chains all the way up to Jakarta, but the main characters were never investigated'.⁴⁰ All the convicted military personnel appealed against the severity of their sentences to the Military High Court in Surabaya, but without success.⁴¹

38 Ibid.

39 *Pengadilan Militer III-13 Madiun Putusan Nomor 38-K/PM.III-13/AD/VII/2012* [Military Court III-13 Madiun (East Java) Decision No 38-K/PM.III-13/AD/VII/2012 in the case of Ilmun Abdul Said]; *Pengadilan Militer III-13 Madiun Putusan Nomor 42 -K / PM. III-13/AD / VIII / 2012* [Military Court III-13 Madiun (East Java) Decision No 42 -K / PM. III-13/AD / VIII / 2012 in the case of Kornelius Nama and others].

40 Ismomuddin: 'Oknum TNI Penyelundup Imigran Merasa Dikorbankan', *Tempo online*, 19 September 2012, <http://www.tempo.co/read/news/2012/09/19/063430565/Oknun-TNI-Penyelundup-Imigran-Merasa-Dikorbankan>.

41 *Pengadilan Militer Tinggi III Surabaya Putusan Nomor 86-K/PMT.III/BDG/AD/XI/2012* [Military High Court III Surabaya (East Java) Decision No 86-K/PMT.III/BDG/AD/XI/2012 in the case of Kornelius Nama]; *Pengadilan Militer Tinggi III Surabaya Putusan Nomor 79-K/PMT.III/BDG/AD/XI/2012* [Military High Court III Surabaya (East Java) Decision No 79-K/PMT.III/BDG/AD/XI/2012 in the case of Ilmun Abdul Said].



Four Indonesian soldiers allegedly involved in people smuggling: chief sergeant Khoirul Anam (R), first lieutenant assistant Sosiali (2nd R), chief corporal Karyadi (3rd R) and second sergeant Kornelius Nama (L) stand at attention as they attend their trial at the Madiun district military court in East Java on 27 September, 2012. The 4 Indonesian soldiers were sentenced to between 5 and 6 years in prison for helping to smuggle migrants into Australia. AFP PHOTO / KHANSA

The non-military facilitators of the smuggling operation stood trial in the District Court in Tulungagung, East Java. Budi Santoso, a civil servant who had also been involved in past people smuggling operations, received 5 years prison and a fine of Rp 1 billion (AU\$100,000). There does not appear to be any reason why the fine was double that handed down to the military personnel. Ronald Messakh, a fisherman from Rote who helped to transfer the asylum seekers from the beach to *The Buah Manggis* [Mangosteen], the main boat awaiting them offshore, received 5 years in prison and a fine of Rp 500 million (AU\$49,800).

The other crew member, Rifan Sudirman, an under-aged fisherboy from Rote who was employed as cook on the *Buah Manggis*, received a prison sentence of 2 years and 6 months, and a fine of Rp 250 million (AU\$24,900). The court took into account the fact that he had no criminal record.⁴² This sentence was imposed regardless of the fact that according to art 120(1) of Law 6/2011 the judge does not have discretion in sentencing to depart from the minimum 5 year prison term and fine of Rp 500 million. As mentioned, this judicial disregard for minimum sentences stipulated in legislation creates real uncertainty

⁴² *Pengadilan Negeri Tulungagung Putusan Nomor 167/Pid.Sus/2012* [District Court of Tulungagung (East Java) Decision No 167/Pid.Sus/2012 in the case of Rifan Sudirman].

about the application of the law.

Two more civilians, Bambang Sugianto and his brother Nurianto, were sentenced in relation to this case. They each received the minimum sentence of 5 years prison and a fine of Rp 500 million (AU\$49,800) for their role in providing a smaller boat to transfer the clients of the smuggler to the *Buah Manggis*.⁴³

The decision in the Trenggalek Case provides a typical example of how the crime of people smuggling in art 120(1) of Law 6/2011 has been interpreted by the judiciary. The courts have identified 4 elements that need to be satisfied to establish the offence of people smuggling in art 120(1) (although in some cases the courts have combined points 2 and 3 below):

1. A person;
2. who does an act that aims to make a profit, either directly or indirectly, for themselves⁴⁴ or for others;
3. who takes a person or group of people, whether organised or unorganised, or instructs others to take a person or group of people, either organised or unorganised;
4. who has or have no legal right to enter or exit Indonesian territory or outside Indonesian territory and/or into another country and the person or persons mentioned⁴⁵ does not have a right to enter the territory legally, either by using legal documents and false documents, or without a Travel Document, either through immigration or not.

The first element is straightforward, although in some cases the courts appear not to have read the provision and instead state that it reads 'A person who together or alone with another person...', when the provision only says 'A person...'. The courts have emphasised that the second element includes cases where the benefit is either for the accused or for someone else, although in most cases the accused directly received financial payment for their work. The courts have also explained that the third element requires that the accused know that the person or persons they assist is foreign and that the accused plays a role in helping the person or persons move around. The fourth element concerns whether the person or persons has entered or exited through the official channels, and has correct documentation. In the Trenggalek Case, the court found that each of the elements of the crime had been satisfied in relation to each of the accused.

The Trenggalek case is significant because it appears to be one of the first people smuggling

43 Hari Tri Wasono: 'Mafia Imigran Gelap Lolos dari Persidangan', *Tempo online*, 13 September 2012, <http://www.tempo.co/read/news/2012/09/13/063429314/Mafia-Imigran-Gelap-Lolos-dari-Persidangan>.

44 That is, the people smuggler.

45 The drafting of this provision is vague, but presumably here the reference is to the irregular migrant.

cases in which military officers have been tried in the Military Courts. It demonstrates that military officers have been working in coordination with people smuggling networks to organise and benefit from such operations. It likewise demonstrates the range of actors who were involved, from under-aged boat crew to soldiers, civil servants and key organisational figures in people smuggling networks.

This case also demonstrates that the courts are now keenly aware of the attention that trials of people smugglers receive both regionally, particularly in Australia, and internationally. For example, in its judgment in the trial of Sergeant Ilmun, the court expressly took into account the following considerations: (p 50)

That the actions of the accused caused the death of many people...

That the actions of the accused damaged the good reputation of the TNI (Indonesian National Army) and the good reputation of the Republic of Indonesia *in the eyes of the International Community*.

That the actions of the accused *came to the attention of the International Community*.

[emphasis added]

The courts have also demonstrated a willingness to take into consideration the particular circumstances of the accused when determining the sentence. The Trenggalek Case shows that the courts appear to be making exceptions to the required minimum sentence in cases where the accused does not have a prior criminal record, or where they only played a limited role in the operation in question. For example, in the case of Sergeant Ilmun, the court took into account the fact that the accused did not have a criminal record; that he financially supported his two small children; that he had expressed his remorse for his behaviour; and that he still wanted to serve in the military. Finally, the importance of this case in bringing military officers to trial can be attributed partly to the wide media coverage it received.⁴⁶ This highlights the crucial link between people smuggling arrests and media exposure, especially to an international audience.

Overall, the Trenggalek Case marks a new era in prosecutions for people smugglers by sending a clear warning to military personnel that they are not immune from the law. Prosecutions of military officers involved in people smuggling operations also suggest that other civil servants who become complicit in these networks, such as immigration officials or the police, may be subject to criminal prosecutions in the future.

⁴⁶ See for example, Hari Tri Wasono: 'Penanganan Kasus Imigran Gelap Dinilai Tebang Pilih', 17 May 2012, <http://www.tempo.co/>; Farouk Armaz: 'Indonesian Military Officers Named Suspects in Asylum Voyage Disaster', 19 January 2012, *The Jakarta Globe*, <http://www.thejakartaglobe.com/>; Matt Brown: 'Indonesian Soldiers Linked to People Smugglers', 18 January 2012, ABC, <http://www.abc.net.au/>.

CONCLUSION

The challenge of people smuggling remains pressing and requires a coordinated response at many levels, including regarding the issue of how to punish and deter those who facilitate such networks. Efforts by the Australian government to increase the scope and quality of its cooperation with Indonesia must take into consideration the progress made by Indonesian law enforcement agencies in prosecuting people smugglers in the courts in Indonesia, as well as the challenges that remain in implementing Law 6/2011 on Immigration consistently and deterring people smuggling operations.

This paper has identified a shift in the way Indonesia deals with people smugglers, largely as a part of its response to its international and regional obligations. This change is also due to growing domestic concerns that people smuggling is negatively affecting Indonesia's international reputation; and that it has the potential to harm vulnerable members of society by drawing poor fishermen into criminal networks. The introduction of Law 6/2011 on Immigration is clearly a significant development as it now allows authorities to arrest and prosecute a person for offences specifically related to people smuggling.

A large number of Indonesians have been convicted under Law 6/2011 on Immigration in the first year and a half of operation and, most importantly, some have been military personnel. Patterns in these trials raise two key issues. The first is the issue of who is arrested and brought to court. In contrast to the cases brought prior to May 2011, the vast majority since then have been Indonesian nationals rather than foreigners. Most of the offenders, however, have been low-level drivers or boat crew who appear to play a small role in larger operations. There is therefore a need for greater education of vulnerable groups, such as fishermen, who are at risk of being drawn into the trade and may be unaware of the recent changes to the law and the legal consequences of their actions. There were community education campaigns prior to 2011 that were well-regarded by the Indonesian government. One was called 'I Know that Smuggling is Wrong' (*Aku Tahu Penyelundupan itu Salah*) and was funded by the Australian government. Given the changes in the law, there is a need for such education programs to be re-established and even expanded, with a new emphasis on explaining the consequences of Law 6/2011 on Immigration. Further, the emphasis should not be on simply increasing the number of convictions, as there is an endless supply of poor fisherman in Indonesia. Instead, strategic steps need to be taken to target those higher up in people smuggling operations.

The second issue is how prosecutors are conducting the trials and how judges are interpreting and applying the provisions of Law 6/2011 on Immigration. The cases surveyed for this paper indicate that prosecutors have at times requested less than the minimum 5 year term. Even where the prosecutor has requested more than 5 years and the judge has imposed a lower sentence, the prosecutor has at times failed to appeal. Further, judges have demonstrated willingness to hand down sentences below the 5 year minimum in cases where the accused is only a minor actor in a bigger operation. This is a reflection of the general perception that Indonesians are being victimised and used by illegal migrants. It also suggests that judges are willing to take into consideration mitigating circumstances and

exercise judicial discretion in sentencing, regardless of what the legislation requires. There is a need, however, for clarification of whether the 5 year penalty is, in fact, mandatory. This is vital to ensure legal certainty and consistency, and the potential deterrent effect of the offences in Law 6/2011 on Immigration. Finally, there appears to be some inconsistency in the severity of sentences in proportion to the relatively minor role taken by some accused in people smuggling crimes. Trials of people smugglers must be prosecuted in a fair and impartial manner, with prosecutors seeking a sentence proportionate to the crime, where possible, and the judges exercising consistency in the severity of sentences handed down.

As the Australian government considers the recommendations of the Houston report, it is imperative that efforts to increase cooperation with Indonesia in terms of law enforcement take into consideration the important legal reforms that have taken place, in addition to the recent increase in prosecutions. However, such efforts must go beyond a focus on how many people are prosecuted, to consider programs that will address the issue of who is being convicted for people smuggling and how the cases are dealt with by the courts. This is particularly important if Australia decides to return Indonesian crew members arrested in Australia to Indonesia to be tried by courts there.

APPENDIX

Table 5: Judicial Decisions under Law 9/1992 on Immigration: 2007 to 2011

No	Year case initiated	Court of first instance	Profile of the Accused ¹	Charges and penalty sought by prosecutor	Outcome
1	2007	Tangerang District Court, West Java	Chandra Babu, 41 year-old man from Sri Lanka, organiser and recruiter. ²	The Prosecutor brought charges under arts 49(a) and (b), 52, 53 and 54(b) of Law 9/1992, and art 263 (20) of the Criminal Code. The Prosecutor sought a sentence of 2 years in prison and a fine of Rp 30 million, or an additional 5 months prison if he did not pay the fine.	On 12 November 2007, he was found guilty only of remaining in Indonesia on an expired visa and was sentenced to 4 years and 21 days in prison. The Bandung High Court upheld this decision. On 27 October 2008, his sentence was reduced by the Supreme Court to 2 years and fine Rp 30 million, or an additional 5 months prison if he did not pay the fine.

No	Year case initiated	Court of first instance	Profile of the Accused ¹	Charges and penalty sought by prosecutor	Outcome
2	2007	Jakarta District Court, Special City of Jakarta	Abraham Lauhenapessy, known as 'Captain Bram', 50 year-old man from Ambon, transporter. ³	The Prosecutor brought charges under art 54(b) of Law 9/1992. The Prosecutor sought a sentence of 5 years in prison and a fine of Rp 25 million, or an additional 5 months prison if he did not pay the fine.	On 10 December 2007, he was sentenced to 2 years in prison and fined Rp 25 million, or an additional 3 months prison if he did not pay the fine. On 6 March 2008, his sentence was reduced to 1 year. On 4 June 2008, the Supreme Court reinforced the 2 year sentence of the court at first instance.

No	Year case initiated	Court of first instance	Profile of the Accused ¹	Charges and penalty sought by prosecutor	Outcome
3	2008	Serang District Court, Banten	Sayed Abbas Azad bin Sayed Abdul Majid, 27 year-old man from Afghanistan, organiser and recruiter. ⁴	The Prosecutor brought charges under art 52 and 54(b) of Law 9/1992. The Prosecutor sought a sentence of 2 years and 6 months in prison, and a fine of Rp 5 million, and an additional 3 months prison if he did not pay the fine.	On 1 July 2009, he was not found guilty. On 26 February 2011, the High Court overruled the decision of the court at first instance and he was sentenced to 2 years and 6 months in prison, and fined Rp 5 million or an additional 3 months prison if he did not pay the fine. ⁵

No	Year case initiated	Court of first instance	Profile of the Accused ¹	Charges and penalty sought by prosecutor	Outcome
4	2008	Serang District Court, Banten	Asadullah bin Khuda Nazar, 31 year-old man from Pakistan, organiser and collaborator with Sayed Abbas. ⁶	The Prosecutor brought charges under art 52, 54(b) and art 54(c) of Law 9/1992. The Prosecutor sought a sentence of 2 years and 6 months in prison and a fine of Rp 5 million, or an additional 3 months prison if he did not pay the fine.	On 1 July 2009, he was found guilty of overstaying his visa under art 52, and fined Rp 6.6 million. On 6 January 2010, the High Court rejected the appeal by the public prosecutor, who argued that the accused should also be convicted of art 54(b). On 21 December 2011, cassation by the Prosecutor was also rejected by the Supreme Court.
5	2009	Kupang District Court, East Nusa Tenggara	La Basa Ali alias Ali Cobra, 35 year-old man from Oelaba, Rote Island (East Nusa Tenggara), organiser. ⁷	The Prosecutor brought charges under art 54(b) of Law 9/1992. The Prosecutor sought a sentence of 4 years in prison and a fine of Rp 14 million. ⁸	On 15 September 2009, he was sentenced to 2 years and 6 months in prison.

No	Year case initiated	Court of first instance	Profile of the Accused ¹	Charges and penalty sought by prosecutor	Outcome
6	2009	Pandeglang District Court, Banten	Abdul Aziz alias Didi, 46 year-old man from Tegal (Central Java), facilitator. ⁹	The Prosecutor brought charges under art 54(b) of Law 9/1992. The Prosecutor sought a sentence of 3 years in prison and a fine of Rp 10 million, and an additional 5 months prison if he did not pay the fine.	On 23 March 2010, he was sentenced to 8 months in prison and fined Rp 2 million, or an additional 2 months prison if he did not pay the fine. On 22 April 2010, the High Court upheld the decision of the District Court.
7	2010	Pandeglang District Court, Banten	Mama Bahar Herman, 53 year-old man from Palopo (South Sulawesi), facilitator. ¹⁰	The Prosecutor brought charges under art 54(b) of Law 9/1992. The Prosecutor sought a sentence of 2 years in prison and a fine of Rp 5 million, and an additional 5 months prison if he did not pay the fine.	On 19 January 2011, he was sentenced to 7 months in prison and fined Rp 2 million, and an additional 1 month prison if he did not pay the fine. On 7 March 2011, the decision of the District Court was upheld on appeal.

No	Year case initiated	Court of first instance	Profile of the Accused ¹	Charges and penalty sought by prosecutor	Outcome
8	2010	Kupang District Court, East Nusa Tenggara	Hamdan Saleh Batjo, 41 year-old man from Rote (East Nusa Tenggara), facilitator. ¹¹	The Prosecutor brought charges under art 54 and 60 of Law 9/1992. The Prosecutor sought a sentence of 6 months in prison, a 1 year probation and a fine of Rp 1 million, and an additional 3 months prison if he did not pay the fine.	On 9 February 2011, he was sentenced to 4 months in prison, but was instead allowed to serve 8 months probation and fined Rp 1 million.
9	2010	Bau-Bau District Court, Southeast Sulawesi	Azis Abdul Syaid alias Azis alias Sultan bin Abdul Syaid, 43 year-old man from Rote (East Nusa Tenggara), organiser. ¹²	The Prosecutor brought charges under art 54(b) and 60 of Law 9/1992. The Prosecutor sought a sentence of 3 years in prison, and a fine of Rp 20 million, and an additional 6 months prison if he did not pay the fine.	On 15 July 2010, he was sentenced to 2 years in prison and fined Rp 20 million, and an additional 3 months prison if he did not pay the fine.

No	Year case initiated	Court of first instance	Profile of the Accused ¹	Charges and penalty sought by prosecutor	Outcome
10	2010	Bau-Bau District Court, Southeast Sulawesi	Esrom Ndolu bin Eklopas Ndolu, 21 year-old man from Rote (East Nusa Tenggara), crew member. ¹³	The Prosecutor brought charges under art 54(b) and 60 of Law 9/1992. The Prosecutor sought a sentence of 2 years in prison, and a fine of Rp 10 million, and an additional 5 months prison if he did not pay the fine.	On 15 July 2010, he was sentenced to 1 year and 6 months prison and fined Rp 10 million, and an additional 3 months prison if he did not pay the fine.
11	2010	Bau-Bau District Court, Southeast Sulawesi	Esrn Therik bin Johan Therik, 37 year-old man from Rote (East Nusa Tenggara), crew member. ¹⁴	The Prosecutor brought charges under art 54(b) and 60 of Law 9/1992. The Prosecutor sought a sentence of 2 years in prison, and a fine of Rp 10 million, and an additional 5 months prison if he did not pay the fine.	On 15 July 2010, he was sentenced to 1 year and 6 months in prison and fined Rp 10 million, and an additional 3 months prison if he did not pay the fine.

No	Year case initiated	Court of first instance	Profile of the Accused ¹	Charges and penalty sought by prosecutor	Outcome
12	2010	Bau-Bau District Court, Southeast Sulawesi	La Ila Baco bin Ahmad Baco, 64 year-old man from Rote (East Nusa Tenggara), crew member. ¹⁵	The Prosecutor brought charges under art 54(b) and 60 of Law 9/1992. The Prosecutor sought a sentence of 2 years prison, and a fine of Rp 10 million, or an additional 5 months prison if he did not pay the fine.	On 15 July 2010, he was sentenced to 1 year prison and fined Rp 10 million, and an additional 3 months prison if he did not pay the fine.
13	2010	Bau-Bau District Court, Southeast Sulawesi	Tobias Henuk bin Daniel Henuk, 64 year-old man from Rote (East Nusa Tenggara), crew member. ¹⁶	The Prosecutor brought charges under art 54(b) and 60 of Law 9/1992. The Prosecutor sought a sentence of 2 years in prison, and a fine of Rp 10 million, and an additional 5 months prison if he did not pay the fine.	On 15 July 2010, he was sentenced to 1 year in prison and fined Rp 10 million, and an additional 3 months prison if he did not pay the fine.
14	2011	Cibadak District Court, West Java	Heider Ali bin Ali Muhammad, 43 year-old man from Baghdad, with Australian residency, recruiter and organiser. ¹⁷	The Prosecutor brought charges under art 50 and 54 of Law 9/1992. The Prosecutor sought a sentence of 2 years and 6 months in prison.	On 3 October 2011, he was sentenced to 1 year and 8 months in prison.

No	Year case initiated	Court of first instance	Profile of the Accused ¹	Charges and penalty sought by prosecutor	Outcome
15	2011	Cibadak District Court, West Java	Abdul Khidir Basyir alias Abu Husain alias Abu Ali, 45 year-old man from Kuwait, recruiter and organiser for Heider Ali. ¹⁸	The Prosecutor brought charges under art 50 of Law 9/1992. The Prosecutor sought a sentence of 2 years and 6 months in prison.	On 3 October 2011, he was sentenced to 1 year and 8 months in prison.

- 1 In relation to the profile of the accused, we have provided the name, gender, age, region or country of origin, and role in relation to the people smuggling operation. For the role, we borrow from the ten categories as identified by İçduygu and Toktas (2002).
- 2 *Mahkamah Agung Putusan Nomor 523K/PID/2008* [Supreme Court Decision No 523K/PID/2008, in the case of Sithaparapillai Santhirababu alias Chandra Babu alias Babu, dated 27 October 2008]; *Pengadilan Negeri Cibinong Putusan Nomor 381/Pid.B/2007/PN.Cbn*. [District Court of Cibinong No 381/Pid.B/2007/PN.Cbn in the case of Sithaparapillai Santhirababu dated 12 November 2007]; *Pengadilan Tinggi Bandung Putusan Nomor 389/Pid/2007/PT.Bdg* [High Court of Bandung No 389/Pid/2007/PT.Bdg in the case of Sithaparapillai Santhirababu dated 8 January 2008].
- 3 *Mahkamah Agung Putusan Nomor 809K/Pid.Sus/2008* [Supreme Court Decision No 809K/Pid.Sus/2008 in the case of Abraham Louhenapessy alias Bram]; *Pengadilan Tinggi Jakarta No 23/Pid/2008/PT.DKI* [High Court of Jakarta No 23/Pid/2008/PT.DKI in the case of Abraham Louhenapessy alias Bram dated 6 March 2008]; *Pengadilan Negeri Jakarta Pusat Putusan Nomor 1787/Pid/B/2007/PN.JKT.PST* [District Court of Central Jakarta No 1787/Pid/B/2007/PN.JKT.PST in the case of of Abraham Louhenapessy alias Bram, dated 10 December 2007].
- 4 *Pengadilan Negeri Serang Putusan Nomor 17/Pid.B/2009.PN.Srg*. [District Court of Serang Decision No 17/Pid.B/2009.PN.Srg, in the case of Sayed Abbas Azad bin Sayed Abdul Majid] and Sayed Abbas Azad bin Sayed Abdul Majid] and *Mahkamah Agung Putusan Nomor 2422K/PID.SUS/2009* [Supreme Court Decision No 2422K/PID.SUS/2009, in the case of Sayed Abbas Azad bin Sayed Abdul Majid].
- 5 Due to a red notice control (no A-4055/10-2009 from 20 October 2009) and a request for extradition issued by Australia, Sayed was kept in prison even after he had finished the prison term because of his suspected involvement in the Trenggalek tragedy.
- 6 *Pengadilan Negeri Serang Putusan Nomor 18/Pid.B/2009/PN.Srg* [District Court of Serang Decision No 18/Pid.B/2009/PN.Srg, in the case of Asadullah]; *Pengadilan Tinggi Banten Putusan Nomor 129/PID/2009/PT.BTN* [High Court Banten Decision 129/PID/2009/PT.BTN, in the case of Asadullah]; *Putusan Mahkamah Agung Nomor 1260K/Pid.Sus/2010* [Supreme Court Decision 1260K/Pid.Sus/2010, in the case of Asadullah].

- 7 *Pengadilan Negeri Kupang Putusan Nomor 358/Pid.B/2009/PN.KPG* [District Court of Kupang Decision No 358/Pid.B/2009/PN.KPG, in the case of La Basa Ali].
- 8 Surat tuntutan no.reg.Pdm-328/K-PANG/07/2009 dated 1 September 2009.
- 9 *Pengadilan Negeri Pandeglang Putusan Nomor 21/Pid.B/2010/PN.Pdg* [District Court of Pandeglang Decision No 21/Pid.B/2010/PN.Pdg, in the case of Abdul Aziz]; *Pengadilan Tinggi Banten Putusan Nomor 65/PID/2010/PT.BTN* [High Court of Banten Decision No 65/PID/2010/PT.BTN, in the case of Abdul Aziz].
- 10 *Pengadilan Negeri Pandeglang Putusan Nomor 266/ Pid .B/ 2010 /PN.Pdg* [District Court of Pandeglang Decision No 266/ Pid.B/ 2010 / PN.Pdg, in the name of Mama]; *Pengadilan Tinggi Banten Putusan Nomor 22/PID/2011 /PT.BTN* [High Court of Banten Decision No 22/ PID/2011 /PT.BTN, in the case of Mama].
- 11 *Pengadilan Negeri Kupang Putusan Nomor 467/Pid.B/2010/PN.KPG* [District Court of Kupang Decision No 467/Pid.B/2010/PN.KPG in the case of Hamdan Saleh Batjo].
- 12 *Pengadilan Negeri Bau-Bau Putusan Nomor 231/PID.B/2010/PN.BB* [District Court of Bau-Bau Decision No 231/PID.B/2010/PN.BB in the case of Azis].
- 13 *Pengadilan Negeri Bau-Bau Putusan Nomor 232 PID.B/2010/PN.BB* District Court of Bau-Bau Decision No 232/PID.B/2010/PN.BB in the case of Esrom].
- 14 *Pengadilan Negeri Bau-Bau Putusan Nomor 235/PID.B/2010/PN.BB* [District Court of Bau-Bau Decision No 235/PID.B/2010/PN.BB in the case of Esron].
- 15 *Pengadilan Negeri Bau-Bau Putusan Nomor 233/PID.B/2010/PN.BB* [District Court of Bau-Bau Decision No 233/PID.B/2010/PN.BB in the case of La Ila].
- 16 *Pengadilan Negeri Bau-Bau Putusan Nomor 234/PID.B/2010/PN.BB* [District Court of Bau-Bau Decision No 234/PID.B/2010/PN.BB in the case of Tobias].
- 17 Although Law 6/2011 was in force from 1 May 2011, the old Law 9/1992 was applied in this case because it related to events that had taken place prior to 1 May 2011. *Pengadilan Negeri Cibadak Putusan Nomor 365/Pid.B/2011/PN.Cbd* [District Court of Cibadak, Decision No 365/Pid.B/2011 / PN.Cbd in the case of Heider Ali bin Ali Muhamad, dated 3 October 2011].
- 18 *Pengadilan Negeri Cibadak Putusan Nomor 364/Pid.Cbd/2011/PN.Cbd* [District Court of Cibadak Decision No 364/Pid.b/2011/PN.Cbd in the case of Abdul Khidir].

Table 6: Judicial Decisions under Law 6/2011 on Immigration: May 2011—Dec 2012¹

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
1	2011	Pontianak District Court, West Kalimantan	Subagiyo, 33 year-old man from Jombang (East Java), driver. ²	The Prosecutor brought charges under art 120 of Law 6/2011. The Prosecutor sought a sentence of 5 years in prison and a fine of Rp 500 million, and an additional 3 months in prison if he did not pay the fine.	On 17 November 2011, he was sentenced to 5 years in prison, and fined Rp 500 million, and an additional 2 months prison if he did not pay the fine.
2	2011	Pontianak District Court, West Kalimantan	Raden Ibrahim alias Ema, 55 year old man from Sanggau (West Kalimantan), driver. ³	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 5 years in prison and a fine of Rp 500 million, and an additional 3 months prison if he did not pay the fine.	On 15 December 2011, he was sentenced to 5 years in prison and fined Rp 500 million, and an additional 3 months prison if he did not pay the fine.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
3	2011	Pontianak District Court, West Kalimantan	Turmudi alias Guntur, 42 year-old man from Blitar (East Java), driver. ⁴	The Prosecutor brought charges under art 124(a) of Law 6/2011. The Prosecutor sought a sentence of 10 months in prison and a fine of Rp 5 million, and an additional 2 months prison if he did not pay the fine.	On 4 January 2012, he was sentenced to 7 months in prison.
4	2011	Pontianak District Court, West Kalimantan	Gogo Prayogo alias Agus Brewok, 43 year-old man from Lamongan (East Java), organiser. ⁵	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 5 years in prison and a fine of Rp 500 million, and an additional 3 months prison if he did not pay the fine.	On 7 March 2012, he was sentenced to 5 years in prison and fined Rp 500 million, and an additional 3 months prison if he did not pay the fine. On 12 May 2012, the High Court upheld the decision of the District Court.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
5	2011	Tajung Karang District Court, Lampung	Rasul Ahmad Yari bin Ahmad, Indonesian man, age and role unknown. ⁶	The Prosecutor brought charges under art 120(2) and 124 of Law 6/2011. The sentence sought by the prosecutor is unknown.	The accused was sentenced to 6 months prison.
6	2011	Tajung Karang District Court, Lampung	Sophia Marlina Binti Sukarta, 25 year-old woman from Bogor (West Java), facilitator. ⁷	The Prosecutor brought charges under art 124 and art 120 of Law 6/2011. The Prosecutor sought a sentence of 8 years in prison and a fine of Rp 600 million, and an additional 5 months prison if she did not pay the fine.	On 11 July 2012, she was sentenced to 8 years in prison and fined Rp 600 million, and an additional 5 months prison if she did not pay the fine.
7	Unknown	Tulungagung District Court, East Java	Bambang Sugianto, 40 year-old Indonesian man, and Nuriyanto, 38 year-old Indonesian male, boat owner. ⁸	The Prosecutor brought charges under art 120(1) of Law 6/2011. The sentence sought by the prosecutor is unknown.	In 12 September 2012, they were sentenced to 5 years in prison and fined Rp 500 million.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
8	2011	Tulungagung District Court, East Java	Rifan Sudirman, 17 year-old man from Kupang (East Nusa Tenggara), crew member. ⁹	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 3 years in prison and a fine of Rp 250 million.	On 31 May 2012, he was sentenced to 2 and a half years in prison and fined Rp 250 million.
9	2012	Tulungagung District Court, East Java	Ronald Messakh, 21 year-old fisherman from Rote Ndaho (East Nusa Tenggara), crew member. ¹⁰	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 7 years prison and a fine of Rp 500 million.	On 10 September 2012, he was sentenced to 5 years in prison and fined Rp 500 million.
10	2011	Tulungagung District Court, East Java	Budi Santoso, 43 year-old man from Tulungagung (East Java), facilitator. ¹¹	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 7 years in prison and a fine of Rp 1 trillion.	On 10 September 2012, he was sentenced to 5 years in prison and fined of Rp 1 trillion.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
11	2011	Military Court Level III-13 Madiun, East Java	Kornelius Nama, 37 year-old male from Mojokerto (East Java); Karyadi, 40 year-old male from Tulungagung (East Java); Susiali, 50 year-old man from Nganjuk; and Khoirul Anam, 43 year-old man from Tulungagung, security guards. ¹²	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought the following prison terms: Kornelius: 8 years in prison, and a fine of Rp 100 million, and an additional 2 months prison if he did not pay the fine; Karyadi, Susiali and Khoirul Anam: 7 years in prison, and a fine of Rp 100 million, and an additional 2 months prison if they did not pay the fine.	On 27 September 2012, they were sentenced to 5-6 years prison and fined Rp 500 million per person, and an additional 2 months prison if they did not pay the fine. On 11 December 2012, the appellate court upheld the original decision.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
12	2011	Surabaya Military Court Level III, East Java	Ilmun Abdul Said, 36 year-old man from Kupang (East Nusa Tenggara), organiser. ¹³	The Prosecutor brought charges under art 120(1) of Law 6/2011, and art 182(2) of Law 31/1997. The Prosecutor sought a sentence of 8 years in prison and a fine of Rp 100 million, and an additional 2 months if he did not pay the fine.	On 11 December 2012, he was sentenced to 6 years prison, and fined Rp 500 million, and an additional 2 months prison if he did not pay the fine. The accused was unsuccessful on appeal.
13	2011	Wonosari District Court, Central Java	Ronald Nussy bin Jagrak, 56 year-old man from Banggai (Central Sulawesi), facilitator. ¹⁴	The Prosecutor brought charges under art 120(2) and 124(a) of Law 6/2011. The sentence sought by the Prosecutor is unknown.	Outcome unknown
14	2011	Cibadak District Court, West Java	Timotius Omid Hussein Ali Jilarry als Amil Kecil als Omid, a 35 year-old man from Iran (nationality listed as 'Indonesian' in court documents), field coordinator and recruiter. ¹⁵	The Prosecutor brought charges under art 120(1) and (2) and art 119 (1) and (2) of Law 6/2011. The Prosecutor sought 7 years in prison and a fine of Rp 500 million, and an additional 3 months if he did not pay the fine.	On 2 May 2012, he was sentenced to 5 years prison and fined Rp 500 million, and an additional 3 months prison if he did not pay the fine.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
15	2012	Cibadak District Court, West Java	Lukmanul Hakim, 44 year-old man from Bogor (West Java), field coordinator and associate of Timotius. ¹⁶	The Prosecutor brought charges under art 120(1) and 119(1) of Law 6/2011. The sentence sought by the Prosecutor is unknown.	On 2 May 2012, he was sentenced 5 years prison and fined Rp 500 million, and an additional 3 months prison if he did not pay the fine.
16	2011	Rote Ndao District Court, East Nusa Tenggara	Captain Muhamed Amin Bire, and his two crew members, Husin Bin Huyada and Hamka Hamda, both men from Indonesia, ages unknown, boat crew. ¹⁷	The Prosecutor brought charges under art 120(1) of Law 6/2011. The sentence sought by the Prosecutor is unknown.	On 19 June 2012, he was sentenced to 7 years in prison, while his two crew members received 5 years. They were each fined Rp 500 million, and an additional 6 months in prison if they did not pay the fine. Their appeal was rejected on 3 September 2012.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
17	2012	Batam District Court, Riau Islands	Haji Guntur alias Zainuddin, 42 year-old man from Lombok (West Nusa Tenggara), field coordinator and organiser. ¹⁸	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 7 years in prison and a fine of Rp 500 million, and an additional 4 months prison if he did not pay the fine.	In November 2012, he was sentenced to 7 years in prison and fined Rp 500 million, and an additional 3 months prison if he did not pay the fine.
18	2012	Batam District Court, Riau Islands	Mansur bin Radiman, 35 year-old man from Lombok (West Nusa Tenggara), driver. ¹⁹	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 7 years in prison and a fine of Rp 500 million, and an additional 5 months prison if he did not pay the fine.	On 27 September 2012, he was sentenced to 5 years in prison and fined Rp 500 million. On 10 December 2012, his appeal was rejected.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
19	2012	Batam District Court, Riau Islands	Umar Alias Ujang, 49 year-old man from Bintan (Riau archipelago), driver. ²⁰	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 5 years in prison and a fine of Rp 500 million, and an additional 5 months prison if he did not pay the fine.	On 4 October 2012, he was sentenced to 5 years in prison and fined Rp 500 million, and an additional 2 months prison if he did not pay the fine.
20	2012	Batam District Court, Riau Islands	Zulkarnaen Ikhwan, 30 year-old man from Sumbawa (West Nusa Tenggara), facilitator and associate of Haji Guntur. ²¹	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 5 years in prison and a fine of Rp 500 million, and an additional 5 months prison if he did not pay the fine.	On 4 October 2012, he was sentenced to 5 years in prison and fined Rp 500 million, and an additional 2 months prison if he did not pay the fine.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
21	2012	Pacitan District Court, East Java	Rurip Sukatno, 30 year-old man from Pacitan (East Java), driver. ²²	The Prosecutor brought charges under art 120(1) and (2) of Law 6/2011. The Prosecutor sought a sentence of 6 years in prison, and a fine of Rp 500 million, and an additional 4 months prison if he did not pay.	On 3 December 2012, he was sentenced to 2 years in prison, and fined Rp 500 million, and an additional 1 month prison if he did not pay the fine.
22	2012	Pacitan District Court, East Java	Agus Dianto, 34 year-old man from Sidoarjo (East Java), driver. ²³	The Prosecutor brought charges under art 120(1) and (2) of Law 6/2011. The Prosecutor sought a sentence of 6 years in prison, and a fine of Rp 500 million, and an additional 4 months if he did not pay.	On 3 December 2012, he was sentenced to 2 years in prison, and fined Rp 500 million, and an additional 1 month prison if he did not pay the fine.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
23	2012	Pacitan District Court, East Java	Yuwardis bin M. Mubin, 42 year-old man from Sidoarjo (East Java), driver. ²⁴	The Prosecutor brought charges under art 120(1) and (2) of Law 6/2011. The Prosecutor sought a sentence of 6 years in prison, and a fine of Rp 500 million, and an additional 4 months if he did not pay.	On 3 December 2012, he was sentenced to 2 years in prison, and fined Rp 500 million, and an additional 1 month prison if he did not pay the fine.
24	2012	Pacitan District Court, East Java	Eko Suprianto bin Sutrimo, 31 year-old man from Surabaya (East Java), driver. ²⁵	The Prosecutor brought charges under art 120(1) and (2) of Law 6/2011. The Prosecutor sought a sentence of 6 years in prison, and a fine of Rp 500 million, and an additional 4 months prison if he did not pay the fine.	On 3 December 2012, he was sentenced to 2 years in prison, and fined Rp 500 million, and an additional 1 month prison if he did not pay the fine.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
25	2012	Pacitan District Court, East Java	Choirul Anam, 51 year-old man from Sidoarjo (East Java), driver. ²⁶	The Prosecutor brought charges under art 120(1) and (2) of Law 6/2011. The Prosecutor sought 6 years in prison, and a fine of Rp 500 million, and an additional 4 months if he did not pay the fine.	On 3 December 2012, he was sentenced to 2 years in prison, and fined Rp 500 million, and an additional 1 month prison if he did not pay the fine.
26	2012	Cibadak District Court, West Java	Edward Kagantino alias Iwan, 37 year-old man from Sukabumi (West Java), driver. ²⁷	The Prosecutor brought charges under art 120(1) of Law 6/2011. The sentence sought by the Prosecutor is unknown.	On 21 December 2012, he was sentenced to 5 years in prison and fined of Rp 500 million, and an additional 6 months prison if he did not pay the fine.
27	2012	Cibadak District Court, West Java	Otim Purnama, 37 year-old man from Bogor (West Java), and Agus Mustofa alias Dapet, 41 year-old man from Bogor, role unclear (probably driver). ²⁸	Unknown	On 21 December 2012, Otim was sentenced to 5 years in prison and fined of Rp. 500 million. Agus Mustofa was found not guilty.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
28	2012	Military Court Bandung, West Java	Rustam Mamulaty, Carsid, Victor Zeth Pattipeilohy, and Johanis Simon, all Indonesian men, ages unknown, protector. ²⁹	The Prosecutor brought charges under art 120(1) of Law 6/2011. The sentence sought by the Prosecutor is unknown.	On 20 December 2012, they were sentenced to between 11 and 14 months in prison, and fined Rp 500 million, and an additional 3 months prison if they did not pay the fine.
29	2012	Military Court Bandung, West Java	Rahman Tuasalamony, Indonesian man, age unknown, protector. ³⁰	The Prosecutor brought charges under art 120(1) of Law 6/2011. The sentence sought by the Prosecutor is unknown.	On 20 December they were sentenced to 1 year and 4 months in prison and fined Rp 500 million, and an additional 2 months prison if he did not pay the fine.
30	2012	East Jakarta District Court, Jakarta	Dawood Damiri alias Hasyim Amiri alias Ervan, 25 year-old Hazara man, organiser and recruiter. ³¹	The Prosecutor brought charges under art 120(1) of Law 6/2011. The Prosecutor sought a sentence of 7 years prison.	On 20 February 2013, he was sentenced to 6 years in prison and fined Rp 750 million.

1 This table only includes cases that were prosecuted in court. If a person was arrested in 2012, but the court case had not begun before the end of 2012, then it is not included in this table.

2 *Pengadilan Negeri Pontianak Putusan Nomor 454/Pid.SUS/2011/PN.Ptk* [District Court of Pontianak Decision No 454/Pid.SUS/2011/

- PN.Ptk, in the case of Subagiyo bin Maslan].
- 3 *Pengadilan Negeri Pontianak Putusan Nomor 537/Pid.SUS/2011/PN.PTK* [District Court of Pontianak Decision No 537/Pid.SUS/2011/PN.PTK, in the case of Raden Ibrahim].
 - 4 *Pengadilan Negeri Pontianak Putusan Nomor 592/Pid.B/2011/PN.PTK* [District Court of Pontianak Decision No 592/Pid.B/2011/PN.PTK, in the case of Turmudij].
 - 5 *Pengadilan Negeri Pontianak Putusan Nomor 597/Pid.Sus/2011/PN.PTK* [District Court of Pontianak Decision No 597/Pid.Sus/2011/PN.PTK, in the case of Gogo Prayogo], *Pengadilan Tinggi Pontianak Putusan Nomor 69/Pid.SUS/2012/2012.PT.PTK* [High Court Decision No 69/Pid.SUS/2012/2012.PT.PTK, in the case of Gogo Prayogo].
 - 6 This data is based on an email exchange conducted by Antje Missbach with F Lolo, 3 February 2013.
 - 7 *Pengadilan Negeri Tanjungkarang Putusan Nomor 389/Pid.B/2012/Pn.Tk* [District Court of Tanjungkarang Decision No 389/Pid.B/2012/Pn.Tk in the name of Sophia], *Pengadilan Tinggi Tanjungkarang Putusan Nomor 133/Pid/2012/PT.TK* [District Court of Tanjungkarang Decision No 133/Pid/2012/PT.TK, in the case of Sophia].
 - 8 <http://metro.sindonews.com/read/2012/09/13/23/672301/pemilik-perahu-pengangkut-imigran-gelap-divonis-5-tahun>.
 - 9 *Pengadilan Negeri Tulungagung Putusan Nomor 167/Pid.Sus/2012* [District Court of Tulungagung (East Java) Decision No 167/Pid.Sus/2012 in the case of Rifan Sudirman].
 - 10 *Pengadilan Negeri Tulungagung Putusan Nomor 174/Pid.Sus/2012* [District Court of Tulungagung (East Java) Decision No 174/Pid.Sus/2012 in the case of Ronald].
 - 11 *Pengadilan Negeri Tulungagung Putusan Nomor 175/Pid.Sus/2012* [District Court of Tulungagung (East Java) Decision No 175/Pid.Sus/2012 in the case of Budi Santoso].
 - 12 *Pengadilan Militer Tinggi III Surabaya Putusan Nomor 86-K/PMT.III/BDG/AD/XI/2012* [Military High Court III Surabaya (East Java) Decision No 86-K/PMT.III/BDG/AD/XI/2012 in the case of Kornelius Nama].
 - 13 *Pengadilan Militer Tinggi III Surabaya Putusan Nomor 79-K/PMT.III/BDG/AD/XI/2012* [Military High Court III Surabaya (East Java) Decision No 79-K/PMT.III/BDG/AD/XI/2012 in the case of Ilmun Abdul Said]; *Pengadilan Militer III-13 Madiun Putusan Nomor 38-K/PM.III-13/AD/VII/2012* [Military Court III-13 Madiun (East Java) Decision No 38-K/PM.III-13/AD/VII/2012 in the case of Ilmun Abdul Said].
 - 14 Statement by the Prosecution in Wonosari case file No. PDM-38/WNSARI/1211.
 - 15 *Pengadilan Negeri Cibadak Putusan Nomor 15/Pid.B/2012/PN.CBD* [District Court of Cibadak Decision No 15/Pid.B/2012/PN.CBD, in the case of Timotius Omid Hussein].
 - 16 *Pengadilan Negeri Cibadak Putusan Nomor 16/PID.B/2012/PN.CBD* [District Court of Cibadak Decision No 16/Pid.B/2012/PN.CBD, in the case of Lukmanul Hakim bin Abdul Majid].
 - 17 *Timor Express*, 'Pengangkut Imigran Gelap Divonis Tujuh Tahun' [Transporter of illegal immigrants gets 7 years in prison], 22 June 2012, [online] <http://www.timorexpress.com/index.php?act=news&nid=49067>. *Putusan Pengadilan Negeri Rote Ndao Nomor 15/PID.SUS/2012/PN.RND* [District Court of Rote Ndao Decision No 15/PID.SUS/2012/PN.RND, in the case of Amin Bere]; *Putusan Pengadilan Tinggi Kupang Nomor 104/Pid/2012/PTK*, [Decision of High Court in Kupang No 104/Pid/2012/PTK, in the case of Amin Bere] and also see *Putusan Pengadilan Negeri Rote Ndao Nomor 16/PID.SUS/2012/PN.RND* [District Court of Rote Ndao Decision No 16/PID.SUS/2012/PN.RND, in the case of Husni Bin Liyada and Hamka Bin Haduj].
 - 18 <http://batam.tribunnews.com/2012/11/03/penyelundup-manusia-divonis-7-tahun>

- 19 *Pengadilan Negeri Batam Putusan Nomor 335/PID.B/2012/PN.Btm* [District Court of Batam Decision No 335/PID.B/2012/PN.Btm, in the case of Mansur]; *Pengadilan Tinggi Pekanbaru Putusan Nomor 220/Pid.Sus/2012/PTR* [High Court of Pekanbaru Decision No 114/Pid.Sus/2012, in the case of Mansur].
- 20 *Pengadilan Negeri Batam Putusan Nomor 435/PID.B/2012/PN.BTM* [District Court of Batam Decision No 435/PID.B/2012/PN.BTM, in the case of Umar Alias].
- 21 *Pengadilan Negeri Batam Putusan Nomor 434/PID.B/2012* [District Court of Batam Decision No 434/PID.B/2012/PN.BTM, in the case of Zulkarnaen].
- 22 *Pengadilan Negeri Pacitan Putusan Nomor 115/Pid.Sus/2012* [District Court of Pacitan (East Java) Decision No 115/Pid.Sus/2012 in the case of Rurip Sukatno bin Suryadi].
- 23 *Pengadilan Negeri Pacitan Putusan Nomor 116/Pid.Sus/2012* [District Court of Pacitan (East Java) Decision No 116/Pid.Sus/2012 in the case of Agus Dianto].
- 24 *Pengadilan Negeri Pacitan Putusan Nomor 117/Pid.Sus/2012* [District Court of Pacitan (East Java) Decision No 117/Pid.Sus/2012 in the case of Yuwardis].
- 25 *Pengadilan Negeri Pacitan Putusan Nomor 114/Pid.Sus/2012* [District Court of Pacitan (East Java) Decision No 114/Pid.Sus/2012 in the case of Eko Suprianto].
- 26 *Pengadilan Negeri Pacitan Putusan Nomor 119/Pid.Sus/2012* [District Court of Pacitan (East Java) Decision No 119/Pid.Sus/2012 in the case of Choirul Anam].
- 27 *Pengadilan Negeri Cibadak Putusan Nomor 443/PID.B/2012/PN.CBD* [District Court of Cibadak Decision No 443/PID.B/2012/PN.CBD, in the case Edward].
- 28 *Pengadilan Negeri Cibadak Putusan Nomor 444/PID.B/2012/PN.CBD* [District Court of Cibadak Decision No 444/PID.B/2012/PN.CBD, in the case Otim].
- 29 Court Registration Number 203-K/PM.II-09/AD/X/2012.
- 30 Court Registration Number 215-K/PM.II-09/AD/X/2012.
- 31 'Otak Penyelundup Imigran Internasional Ditangkap', 3 July 2012, <http://indopers.com/node/2780>; G Roberts: 'Court hears jailed smuggler had Australian links', *ABC*, 21 February 2013, <http://www.abc.net.au/news/2013-02-21/court-hears-of-australian-links-to-jailed-people-smuggler/4530982>; A Sheehy and K Salna: 'Man behind deadly voyages faces 7 years', *Sydney Morning Herald*, 13 February 2013, <http://news.smh.com.au/breaking-news-world/man-behind-deadly-voyages-faces-7-years-20130213-2ec6o.html>.

Table 7: Judicial Decisions on Law 17/2008 on Shipping

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
1	2009	Kupang District Court, East Nusa Tenggara	Rahya Abdul Syaid, Indonesian man, captain of the boat. ¹	The Prosecutor brought charges under art 323(1) of Law 17/2008. The Prosecutor sought 6 months in prison and a fine of Rp 1 million, and an additional 1 months prison if he did not pay the fine.	On 25 February 2010, Syaid was sentenced to 4 months prison and fined Rp 1 million.
2	2011	Rangkasbitung District Court, Banten	Kamong Bin Rajab, fisherman, 59 year-old Indonesian man, transporter. ²	The Prosecutor brought charges under art 323(1) of Law 17/2008. The Prosecutor sought 2 years in prison and a fine of Rp 1 million, and an additional 5 months prison if he did not pay the fine.	On 15 September 2011, he was sentenced to 1 year prison and fined Rp 1 million, and an additional 3 months in prison if he did not pay the fine.
3	2011	Batam District Court, Riau Islands	Makesu Selvakumaran, 41 year-old man from Sri Lanka, captain of the boat. ³	The Prosecutor brought charges under art 323(1) and art 219(1) of Law 17/2008. The Prosecutor sought a sentence of 10 months in prison.	On 8 May 2012, he was sentenced to 6 months in prison, and fined Rp 10 million.

No	Year case initiated	Court of first instance	Profile of the Accused	Charges and penalty sought by prosecutor	Outcome
4	2011	Kebumen District Court, Central Java	Andi Muhamad Gustaf Fritalius Ratu Ello, 64 year old man from East Nusa Tenggara, captain. ⁴	The Prosecutor brought charges under art 323(1) and art 219(1) of Law 17/2008. The Prosecutor sought a sentence of 1 year and 6 months in prison.	On 11 October 2011, he was sentenced to 1 year in prison and fined Rp 20 million, and an additional 3 months prison if he did not pay the fine.

- 1 *Pengadilan Negeri Kupang Putusan Nomor: 257/PID.B/2009/Pn.KPG*, [District Court of Kupang Decision No 257/PID.B/2009/Pn.KPG, in the case of Rahya Abdul Syaid, dated 25 February 2010].
- 2 *Pengadilan Negeri Rangkasbitung Putusan Nomor 37/Pid.Sus/2011/PN.Rkb* [District Court of Rangkasbitung Decision No 37/Pid.Sus /2011/PN.Rkb, in the case of Kamong].
- 3 *Pengadilan Negeri Batam Putusan Nomor 215/PiD.B/2012/PN.BTM* [District Court of Batam Decision No 215/PiD.B/2012/PN.BTM, dated 8 May 2012 in the case of Makesu].
- 4 *Pengadilan Negeri Kebumen Putusan Nomor 50/Pid.Sus/2011 /PN.Kbm* [District Court of Kebumen Decision No 50/Pid.Sus /2011/ PN.Kbm, in the case of Andi], *Pengadilan Tinggi Semarang Putusan Nomor No 391/Pid /2011/PT.Smg* [High Court of Semarang Decision No 391/Pid /2011/PT.Smg, in the case of Andi].

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LEGISLATION

Extradition Treaty between Australia and the Republic of Indonesia (1992)

Extradition Act 1998 (Australia)

Law No. 1 of 1979 on Extradition (Indonesia)

Law No. 24 of 2000 on International Treaties (Indonesia)

Law No. 17 of 2008 on Shipping (Indonesia)

Law No. 5 of 2009 on the Enactment of the United Nations Convention against Transnational Organised Crimes (Indonesia)

Law No. 15 of 2009 on the Ratification of the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UNCATOC Protocol (Indonesia)

Law No. 6 of 2011 on Immigration (Indonesia)

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