

Australian government snubs Indonesian lawsuit over teenagers jailed as “people smugglers”

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For the past five years, Australian governments have sought to block an Indonesian class action lawsuit on behalf of 115 Indonesian minors wrongfully incarcerated in adult Australian prisons and refugee detention centres as alleged “people smugglers.”

Last month, after the Australian government repeatedly refused to appear in the proceedings, a Jakarta court finally ordered it to participate in a mediation process. But the Canberra authorities are still refusing to recognise the court’s jurisdiction.

According to Lisa Hiarij, the Indonesian lawyer representing the teenagers, her clients, mostly from parts of Indonesia’s impoverished east, such as West Timor, were tricked into working on boats of asylum seekers trying to reach Australia. They were told they would be ferrying tourists or transporting goods.

Under Australia’s anti-refugee laws, so-called people smugglers are subject to draconian penalties, including imprisonment of up to 20 years. In this class action, 31 teenagers as young as 14 were jailed in adult prisons and 84 were placed in immigration detention. All were imprisoned from between six months and almost three years.

Faisal Arysad, now 25, was 15 when he accepted an offer of 15 million rupiah, more than half a year’s pay, to ferry “tourists” from his hometown of Kupang to Java. Intercepted en route, he was taken to a detention centre in Darwin, where a notoriously unreliable x-ray test supposedly showed he was an adult.

Initially, five years ago, compensation for the plaintiffs was sought through mediation. However, Australian governments denied court summons and Freedom of Information applications, so Hiarij launched a \$103 million class action against four

Australian agencies—the Australian Federal Police, the Border Protection department, the Commonwealth Director of Public Prosecutions and the Attorney-General’s Department.

Australian governments viewed the lawsuit with contempt, refusing to send representatives to the court hearings, insisting that “as a sovereign state” their agencies were not subject to the court’s jurisdiction. After another failed showing last month, the Central Jakarta District Court ordered Canberra into mediation over the case.

The Australian government’s lawyer, Togi Pangaribuan, declared: “We want to highlight that the Central Jakarta Court actually has no authority, because as a sovereign state Australia has what is called state immunity.” Summing up Canberra’s arrogance, he added: “But we will see how the court process goes.”

This case further exposes the fraud of the “people smuggling” campaign waged by successive Labor and Liberal-National governments in which refugee boat organisers, often poor fishing people from Indonesia, have been scapegoated and punished for seeking to help asylum seekers flee to Australia to escape war, poverty and death.

Aided by the corporate media, governments have depicted “people smugglers” as cruel criminals preying on vulnerable individuals. Australian governments have tried to justify their violation of the basic legal and democratic rights of asylum seekers by claiming to be “saving lives” by disrupting the “business model” of “people smuggling syndicates.”

In reality, the refugee boat organisers and their crews come from impoverished countries and make perilous journeys in ill-equipped vessels, attempting to transport

desperate asylum seekers to Australia. Any extortion or criminal practices that flow from this process are the direct result of the denial to refugees of any other pathway to Australia.

Many of the crew members are young boys working in dangerous conditions in order to earn a small wage. Another boy, involved in a separate Australian legal case, is Ali Yasmin, who was only 13 when he worked as a cook on an asylum seeker vessel. After his arrest in 2009 he pleaded guilty to “people smuggling” and was jailed for nearly three years in a maximum security prison in Perth, Western Australia.

Yasmin pleaded guilty despite an Indonesian birth certificate and family registration document putting his age as 13 at the time of his arrest—documents that were never tendered as part of his defence.

Yasmin, like all the boys in the Jakarta lawsuit, was subjected by the police to a wrist x-ray to determine his age. This form of assessment is outdated and inaccurate. It was originally designed to analyse anatomical growth markers, not an individual’s age. Moreover, the bone growth of a child depends on their lifestyle. Children who are put to hard manual work typically have more rapid bone development.

During an Australian court hearing in February, in which Yasmin sought to overturn his conviction, the Australian government finally conceded that the technique was so unreliable it was “legally unsafe.” In June, the Western Australian Court of Appeal eventually overturned his conviction, in what was considered as a test case for 14 other Indonesian teenagers.

The practice of jailing Indonesian teenagers was initiated by the Rudd Labor government in 2008 and continued by Julia Gillard’s Greens-backed minority Labor government. The wrist x-ray procedure was finally discontinued in July 2013, after the Labor government had reopened the Manus Island and Nauru detention camps and announced that no refugees arriving by boat would ever be permitted to settle in Australia.

In other words, this criminal practice was ended only after the Labor government declared it had “locked down” Australia’s borders. The Labor government initiated the life-threatening policy, continued to this day, of using the military to intercept refugee boats and force them to return to their points of origin, often

without enough fuel and supplies to reach land.

Canberra’s contempt for the Jakarta court is in line with its attitude toward Papua New Guinea (PNG). In August, the Australian High Court rubberstamped the government’s defiance of a PNG Supreme Court order to shut down the Australian-controlled detention centre on PNG’s Manus Island, because it violated a constitutional ban on deprivation of liberty. Australia’s highest court declared that the federal government did not “need to conform with the domestic law of another country.”

The crimes committed by Australian governments against refugees, and Indonesian children, will continue despite lawsuits. The treatment of asylum seekers and boat crews flows from the entire “border protection” framework of the nation-state system, in which corporate profit is rooted. The answer lies in the unification of workers across the region, and the globe, in a struggle to end the capitalist system itself.



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