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Original Article

# Reconstructing Bilateral Search and Rescue Cooperation for Irregular Labour Migration across Indonesia–Malaysia Maritime Routes

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## Abstract

Irregular labour migration between Indonesia and Malaysia frequently takes place on small, overloaded vessels crossing the Malacca Strait and adjacent waters, and recurrent maritime accidents have exposed the limits of existing search and rescue (SAR) arrangements. Although international law imposes a clear duty to render assistance to persons in distress at sea, the division of responsibility between neighbouring states within adjacent or contested search and rescue regions remains uncertain, particularly where the persons in distress are irregular migrants. This study aims to analyse the international and national legal frameworks governing SAR as they apply to irregular labour migration, to examine the architecture of Indonesia–Malaysia SAR cooperation and the problem of contested search and rescue regions, to identify the weaknesses of existing cooperation, and to propose a model for its reconstruction. This study employs normative legal research using statutory, conceptual, and comparative approaches. The findings show that the duty to rescue is well established, but that its effectiveness on Indonesia–Malaysia routes is weakened by the absence of a dedicated bilateral SAR instrument, the unresolved status of parts of the maritime boundary, the dominance of security and anti-smuggling approaches, the lack of agreed disembarkation and post-rescue protection procedures, and fragmented data and coordination. This study concludes that bilateral SAR cooperation should be reconstructed through a dedicated bilateral SAR agreement, clear allocation of coordination responsibility, a humanitarian firewall separating rescue from enforcement, agreed disembarkation and protection protocols, and joint information and accountability mechanisms.

**Keywords**: Search and rescue, Irregular Labour Migration, Indonesia–Malaysia, Maritime Cooperation, law of the sea

## Introduction

The sea between Indonesia and Malaysia is one of the busiest migration corridors in Southeast Asia. Every year, large numbers of Indonesian workers travel to Malaysia in search of employment, and a significant share of them do so outside the official placement system. Wahyudi shows that undocumented Indonesian migrant workers rely on networks of friends, relatives, neighbours, and ethnic communities that operate largely beyond the control of the state, and that their lack of documentation limits their access to rights and services.[1] Much of this irregular movement takes place by sea, across the Malacca Strait and the waters between the Riau Islands and Johor, on vessels

[1] Ridwan Wahyudi, 'Illegal Journey: The Indonesian Undocumented Migrant Workers to Malaysia', *Populasi*, 25.2 (2017), 24–43 https://doi.org/10.22146/jp.36202

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that are often small, overloaded, and unseaworthy. When such vessels capsize or break down, the persons on board are exposed to the gravest risks, and the question of which state is responsible for coming to their rescue becomes a matter of life and death.

International law answers the most basic part of that question with considerable clarity. The duty to render assistance to persons in distress at sea is among the oldest and most firmly established rules of the law of the sea. Papanicolopulu traces the historical origins of this duty and shows that it developed into a norm of international law that applies irrespective of the nationality or status of the persons concerned.[2] Article 98 of the United Nations Convention on the Law of the Sea (UNCLOS) requires every state to oblige the masters of ships flying its flag to render assistance to persons in danger of being lost at sea, and requires coastal states to promote the establishment, operation, and maintenance of adequate SAR services and, where circumstances so require, to cooperate with neighbouring states through mutual regional arrangements.[3] The International Convention on Maritime Search and Rescue (SAR Convention) and the International Convention for the Safety of Life at Sea (SOLAS) elaborate these obligations into an operational framework.[4]

The difficulty lies in translating this framework into effective action in a particular maritime space shared by two states. The SAR Convention requires states to establish search and rescue regions (SRRs) by agreement and to coordinate SAR operations within those regions through rescue coordination centres.[5] In narrow and heavily trafficked waters, however, distress incidents may occur close to the boundary between adjacent regions, in areas where maritime boundaries themselves remain partly undelimited, or in circumstances in which each state has incentives to regard the incident as falling within the responsibility of the other. Arsana shows that, although Indonesia and Malaysia signed a maritime boundary agreement in 1969, parts of their maritime boundaries remain unresolved and have been associated with incidents at sea.[6] Khan observes more generally that undelimited and overlapping maritime areas create persistent problems of jurisdiction and law enforcement for coastal states.[7] This study uses the term contested search and rescue regions to describe maritime spaces in which the allocation of SAR responsibility between neighbouring states is uncertain, disputed, or avoided in practice, whether because of boundary uncertainty, overlapping claims, or reluctance to assume the consequences of rescue.

The fact that the persons in distress are irregular labour migrants adds a further layer of complexity. Rescue at sea does not end when persons are taken out of the water; it ends only when they are delivered to a place of safety. Coppens and Somers show that the rules on the disembarkation of persons rescued at sea were amended in 2004 precisely because states had disagreed about where rescued persons should be landed.[8] Campàs Velasco argues that the concept of a place of safety should be interpreted in light of human rights and refugee law, so that it accounts for the particular vulnerabilities of persons who travel irregularly by sea.[9] For irregular labour migrants travelling between Indonesia and Malaysia, the question of disembarkation is closely tied to questions of

[2] Irini Papanicolopulu, 'The Historical Origins of the Duty to Save Life at Sea in International Law', *Journal of the History of International Law*, 24 (2022), 149–88 https://doi.org/10.1163/15718050-12340199

[3] Article 98 of the United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982.

[4] Irini Papanicolopulu, 'The Duty to Rescue at Sea, in Peacetime and in War: A General Overview', *International Review of the Red Cross*, 98.902 (2016), 491–514 https://doi.org/10.1017/S1816383117000406; Yoshifumi Tanaka, *The International Law of the Sea*, 3rd edn (Cambridge: Cambridge University Press, 2019).

[5] Chapter 2 of the International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, as amended.

[6] I Made Andi Arsana, 'Good Fences Make Good Neighbours: Challenges and Opportunities in Finalising Maritime Boundary Delimitation in the Malacca Strait between Indonesia and Malaysia', *Indonesian Journal of International Law*, 12.1 (2014) https://doi.org/10.17304/ijil.vol12.1.590

[7] Mehran Idris Khan, 'Law Enforcement Issues in the Disputed Maritime Areas: Apples and Pears for the Coastal States', *Frontiers in Marine Science*, 12 (2025), 1690709 https://doi.org/10.3389/fmars.2025.1690709

[8] Jasmine Coppens and Eduard Somers, 'Towards New Rules on Disembarkation of Persons Rescued at Sea?', *The International Journal of Marine and Coastal Law*, 25.3 (2010), 377–403 https://doi.org/10.1163/157180810X571006

[9] Ainhoa Campàs Velasco, 'Vulnerability and Marginalisation at Sea: Maritime Search and Rescue, and the Meaning of "Place of Safety"', *International Journal of Law in Context*, 18.1 (2022), 85–99 https://doi.org/10.1017/S1744552322000076

immigration status, criminal liability for people smuggling, and the protection obligations of the state of nationality.[10]

Comparative experience shows how these complexities can undermine the humanitarian purpose of SAR. Ghezelbash and others demonstrate that, in both the Mediterranean and offshore Australia, the response to boat migration has become increasingly securitised, with militarisation, criminalisation, and reduced transparency weakening the humanitarian objectives of search and rescue.[11] Moreno-Lax, Ghezelbash, and Klein show that states tend to select the legal framework applicable to an incident according to how they frame it, whether as a matter of life, security, or rights.[12] Klein argues that the fragmented application of the law of the sea, SAR law, refugee law, and human rights law to maritime interceptions calls for a harmonised approach.[13] Galani contends that, because the SAR treaties do not themselves contain human rights obligations, a human rights-centred approach to SAR is required, covering the period from the receipt of a distress call until the disembarkation of rescued persons.[14]

Southeast Asia has its own experience of these dilemmas. In May 2015, thousands of Rohingya and Bangladeshi migrants were left stranded in the Andaman Sea after smugglers abandoned their vessels, and several states in the region initially refused to allow them to disembark.[15] Gleeson shows that the crisis prompted a series of regional responses, but that many of the commitments made in its aftermath remain unfulfilled.[16] Thom documents the ad hoc arrangements under which the Rohingya rescued and landed in Aceh were received.[17] These events demonstrate that the region has faced, and has not fully resolved, the problem of coordinating rescue and disembarkation among neighbouring states. They also show that Indonesia and Malaysia are central actors in any regional solution.[18]

Existing scholarship on Indonesia–Malaysia labour migration has focused primarily on recruitment, placement, labour rights, trafficking, and the governance of migration.[19] Scholarship on maritime

[10] Yohanes Hermanto Sirait and Dian Narwastuty, 'Dari Pelaku Ke Korban Penyelundupan Pekerja Migran Sukarela: Pilihan Hukum Internasional Atau Hukum Indonesia', *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum*, 11.1 (2022), 16–28 https://doi.org/10.22373/legitimasi.v11i1.13722; Aryani Sri Hartati, 'Criminalization of the Smuggling of Migrants in Accordance with the United Nations Convention against Transnational Organized Crime and Protocol against the Smuggling of Migrants by Land, Sea and Air', *Indonesian Journal of International Law*, 11.1 (2013), 19–48 https://doi.org/10.17304/ijil.vol11.1.265

[11] Daniel Ghezelbash, Violeta Moreno-Lax, Natalie Klein, and Brian Opeskin, 'Securitization of Search and Rescue at Sea: The Response to Boat Migration in the Mediterranean and Offshore Australia', *International and Comparative Law Quarterly*, 67.2 (2018), 315–51 https://doi.org/10.1017/S0020589317000562

[12] Violeta Moreno-Lax, Daniel Ghezelbash, and Natalie Klein, 'Between Life, Security and Rights: Framing the Interdiction of "Boat Migrants" in the Central Mediterranean and Australia', *Leiden Journal of International Law*, 32.4 (2019), 715–40 https://doi.org/10.1017/S0922156519000451

[13] Natalie Klein, 'A Case for Harmonizing Laws on Maritime Interceptions of Irregular Migrants', *International & Comparative Law Quarterly*, 63.4 (2014), 787–814 https://doi.org/10.1017/S0020589314000360

[14] Sofia Galani, 'Human Rights Obligations in Maritime Search and Rescue', *International & Comparative Law Quarterly*, 74.1 (2025), 33–60 https://doi.org/10.1017/S0020589325000132

[15] Madeline Gleeson, 'Unprecedented but Unfulfilled: Refugee Protection and Regional Responses to the Andaman "Crisis"', *Antropologi Indonesia*, 38.1 (2017) https://doi.org/10.7454/ai.v38i1.8747

[16] Gleeson, 'Unprecedented but Unfulfilled'.

[17] Graham Thom, 'The May 2015 Boat Crisis: The Rohingya in Aceh', *Cosmopolitan Civil Societies: An Interdisciplinary Journal*, 8.2 (2016), 43–62 https://doi.org/10.5130/ccs.v8i2.4816

[18] Danau Tanu, Antje Missbach, and Dave Lumenta, 'Introduction: Forced Migration and Protracted Transit in Indonesia and Southeast Asia', *Antropologi Indonesia*, 38.1 (2017) https://doi.org/10.7454/ai.v38i1.8754; Antje Missbach, *Troubled Transit: Asylum Seekers Stuck in Indonesia* (Singapore: ISEAS Publishing, 2015).

[19] Andi Luhur Prianto, Aqmal Reza Amri, and Mohd Na'eim Ajis, 'Governance and Protection of Indonesian Migrant Workers in Malaysia: A Study on Policy and Innovation Network', *Journal of Southeast Asian Human Rights*, 7.2 (2023), 214–49 https://doi.org/10.19184/jseahr.v7i2.44185; Yeti Kurniati and Abdillah Abdillah, 'Comparative Labor Law Studies in Indonesia and Malaysia: Social–Economic Inequality and Governance of Migrant Workers', *Laws*, 14.6 (2025), 79 https://doi.org/10.3390/laws14060079; Hardi Warsono, Marten Hanura, and Retna Hanani, 'International Collaborative Governance in Preventing Irregular Indonesian Migrant Workers to Malaysia', *Jurnal Ilmu Sosial*, 21.2 (2022), 223–49 https://doi.org/10.14710/jis.21.2.2022.223-249; Endro Sulaksono, 'The Patterns of Human Trafficking of Indonesian Migrant Workers: Case Study of the Riau Islands and Johor Border Crossing', *Masyarakat: Jurnal*

cooperation between the two states has focused largely on maritime security, particularly the coordinated patrols against piracy and armed robbery in the Malacca Strait.[20] Legal scholarship on people smuggling has examined criminalisation and enforcement.[21] The international literature on SAR and migration has focused largely on the Mediterranean and Australia.[22] What remains largely unexamined is the legal design of bilateral SAR cooperation between Indonesia and Malaysia as it applies to irregular labour migration: how responsibility for rescue is allocated between the two states, how rescue relates to migration enforcement, and how persons rescued are to be disembarked and protected.

This study addresses that gap through four research questions. First, what international and national legal frameworks govern SAR as it applies to irregular labour migration on Indonesia–Malaysia maritime routes? Second, how is SAR cooperation between Indonesia and Malaysia currently structured, and how does the problem of contested search and rescue regions arise within it? Third, what are the principal weaknesses of existing cooperation from the perspective of the protection of life at sea and of the rights of irregular migrants? Fourth, what model of bilateral SAR cooperation should be adopted to address those weaknesses? By answering these questions, the study seeks to contribute to the literature on the law of the sea, migration law, and regional cooperation in Southeast Asia.

The novelty of this study lies in three aspects. First, it treats SAR on Indonesia–Malaysia labour migration routes as a distinct legal problem, rather than as an incidental aspect of border control or labour migration governance. Second, it introduces the analytical category of contested search and rescue regions to capture the ways in which responsibility for rescue may become uncertain or avoided between neighbouring states, even where the formal allocation of regions is settled. Third, it proposes a reconstructed model of bilateral SAR cooperation that integrates the law of the sea, anti-smuggling law, and the protection obligations of the state of nationality. In doing so, the study seeks to move the discussion of SAR and migration in Southeast Asia beyond the refugee-focused debates prompted by the Andaman crisis, and to address the situation of labour migrants who constitute the majority of irregular sea crossings between the two states.[23]

## Method

This study employs normative legal research, which examines law as a system of norms and evaluates its coherence and adequacy. Three approaches are combined. The statutory approach examines the relevant international instruments, namely UNCLOS, SOLAS, the SAR Convention, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, together with the ASEAN Declaration on Cooperation in Search and Rescue of Persons and Vessels in Distress at Sea, and the relevant Indonesian legislation on the ratification of these instruments, search and rescue, immigration, the protection of migrant workers, and the handling of refugees. The conceptual approach draws on the concepts of the duty to render assistance, search and rescue regions, place of

*Sosiologi*, 23.2 (2018) https://doi.org/10.7454/MJS.v23i2.6562; Aura Ratrika and Jun Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia Korban Perdagangan Orang di Malaysia Menurut Protokol Palermo Tahun 2000', *Jurnal Reformasi Hukum Trisakti*, 6.1 (2024), 399–408 https://doi.org/10.25105/refor.v6i1.19478

[20] Avita Nariyanti Putri, Reni Windiani, and Marten Hanura, 'Kerjasama Indonesia, Malaysia Dan Singapura Di Selat Malaka Dalam Menangani Perampokan Bersenjata Tahun 2004–2013', *Journal of International Relations Diponegoro*, 2.3 (2016), 250–57 https://doi.org/10.14710/jirud.v2i3.12495

[21] Hartati, 'Criminalization of the Smuggling of Migrants'; Herbin Marulak Siahaan and Jogi Talar Saragih, 'The Problems of Punishing People Smuggling Perpetrators as a Transnational Organized Crime Network', *Jurnal Penegakan Hukum dan Keadilan*, 6.1 (2025), 12–31 https://doi.org/10.18196/jphk.v6i1.23442; Yasmirah Mandasari Saragih, Ahmad Zaharuddin Sani B. Ahmad Sabri, and Roziya Abu, 'Penegakan Hukum Terhadap Pelaku Penyelundupan Manusia Ke Indonesia', *Jurnal USM Law Review*, 4.1 (2021), 161–74.

[22] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'; Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'; Klein, 'A Case for Harmonizing Laws'.

[23] Gleeson, 'Unprecedented but Unfulfilled'; Wahyudi, 'Illegal Journey'; Prianto, Amri, and Ajis, 'Governance and Protection of Indonesian Migrant Workers'.

safety, securitisation, and the non-criminalisation of smuggled migrants.[24] The comparative approach draws on the experience of the Mediterranean and offshore Australia as reported in the literature, and on the regional experience of the 2015 Andaman Sea crisis.[25]

The legal materials consist of primary materials, comprising the international instruments and national legislation listed above; secondary materials, comprising peer-reviewed journal articles and authoritative textbooks on the law of the sea, maritime security, and migration; and, where relevant, published documents of international organisations. The study does not rely on news reports as sources of evidence. Because the text of operational arrangements between the SAR authorities of Indonesia and Malaysia is not fully available to the public, the analysis of existing bilateral cooperation is based on the published legal framework and on the scholarly literature, and its conclusions concerning operational practice should be read with that limitation in mind. All legal materials were analysed qualitatively through legal interpretation, systematisation, and comparison, and the results are presented descriptively and prescriptively.

The choice of a normative approach reflects the nature of the research questions, which concern the content and adequacy of legal obligations and the design of legal instruments rather than the measurement of operational outcomes. Normative analysis is particularly suited to identifying gaps between the obligations that states have accepted and the instruments through which they implement them, and to formulating proposals for legal reform.[26] The comparative dimension of the study does not assume that the Mediterranean or Australian experience is directly transferable to Southeast Asia. Rather, it uses that experience to identify legal risks and design choices that are relevant to any context in which rescue at sea intersects with the control of irregular migration.[27] The regional dimension, drawing on the Andaman crisis and its aftermath, situates the analysis within the specific institutional and political conditions of Southeast Asia, including the predominance of non-binding cooperative arrangements and the position of Indonesia and Malaysia as states of origin, transit, and destination.[28]

The analysis proceeds in four steps that correspond to the research questions. The first step identifies the international and national norms governing SAR and their application to irregular migrants. The second step examines the architecture of Indonesia–Malaysia SAR cooperation and the sources of contestation in the allocation of responsibility. The third step evaluates that architecture against the obligations identified in the first step and against comparative experience in order to identify weaknesses. The fourth step formulates a reconstructed model of bilateral SAR cooperation.

## Results and Discussions

### *The International and National Legal Framework of Search and Rescue for Irregular Labour Migrants*

The international legal framework of SAR rests on three principal instruments. The first is UNCLOS, whose Article 98 codifies the duty to render assistance. Paragraph (1) requires every state to require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew, or the passengers, to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress. Paragraph (2) requires every coastal state to promote the establishment, operation, and maintenance of an adequate and effective SAR service regarding safety on and over the sea and, where circumstances so require, to cooperate

[24] Papanicolopulu, 'The Duty to Rescue at Sea'; Campàs Velasco, 'Vulnerability and Marginalisation at Sea'; Ghezelbash and others, 'Securitization of Search and Rescue at Sea'; Sirait and Narwastuty, 'Dari Pelaku Ke Korban Penyelundupan'.

[25] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'; Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'; Gleeson, 'Unprecedented but Unfulfilled'.

[26] Tanaka, *The International Law of the Sea*; Dikdik Mohamad Sodik, *Hukum Laut Internasional Dan Pengaturannya Di Indonesia*, 3rd printing (Bandung: Refika Aditama, 2016).

[27] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'; Klein, 'A Case for Harmonizing Laws'.

[28] Gleeson, 'Unprecedented but Unfulfilled'; Tanu, Missbach, and Lumenta, 'Introduction: Forced Migration and Protracted Transit'; Missbach, *Troubled Transit*.

with neighbouring states for this purpose by way of mutual regional arrangements.[29] Tanaka explains that this provision combines an obligation of the flag state concerning the conduct of its ships with an obligation of the coastal state concerning the provision of SAR services.[30] Rothwell and Stephens similarly emphasise that the duty to render assistance is a long-standing obligation of the law of the sea that applies in all maritime zones.[31] Indonesia ratified UNCLOS through Law Number 17 of 1985.[32]

The second instrument is SOLAS, which, in Chapter V, requires the master of a ship at sea that is in a position to provide assistance, on receiving information that persons are in distress, to proceed with all speed to their assistance, and specifies that this obligation applies regardless of the nationality or status of such persons or the circumstances in which they are found.[33] Papanicolopulu shows that this formulation reflects the humanitarian foundation of the duty to rescue, which is concerned with the preservation of human life rather than with the legal status of the persons in danger.[34] For irregular labour migrants, the significance of this rule is fundamental: their irregular status does not diminish the obligation of ships and states to come to their assistance.

The third instrument is the SAR Convention, which establishes the institutional and operational framework for SAR. The Convention requires parties to ensure that adequate SAR services are provided in their coastal areas, to establish SRRs by agreement among the parties concerned, and to establish rescue coordination centres to coordinate SAR operations within those regions.[35] The Convention provides that the delimitation of SRRs is not related to and shall not prejudice the delimitation of any boundary between states.[36] This rule is particularly important for Indonesia and Malaysia, because it allows SAR responsibilities to be allocated even where maritime boundaries remain unresolved. Indonesia became a party to the SAR Convention through Presidential Regulation Number 30 of 2012.[37]

The structure of the SAR Convention reflects a deliberate choice to rely on cooperation rather than on rigid territorial rules. By requiring that SRRs be established by agreement and by separating them from maritime boundaries, the Convention seeks to ensure that every part of the ocean is covered by a responsible SAR service, while leaving states free to organise that coverage in accordance with their capabilities.[38] Rothwell and Stephens note that this functional design distinguishes the SAR regime from the zonal structure of much of the law of the sea, in which rights and duties depend on the maritime zone concerned.[39] Sodik explains that Indonesian law has incorporated the zonal structure of the law of the sea through legislation on territorial waters, archipelagic waters, and the exclusive economic zone.[40] The SAR framework, by contrast, cuts across these zones, so that the obligation to rescue applies in all waters, including the territorial sea and archipelagic waters, and is not dependent on the location of the incident in relation to sovereignty or sovereign rights.

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29 Article 98 paragraphs (1) and (2) of the United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982.

30 Tanaka, *The International Law of the Sea*.

31 Donald R. Rothwell and Tim Stephens, *The International Law of the Sea*, 2nd edn (Oxford: Hart Publishing, 2016).

32 Law of the Republic of Indonesia Number 17 of 1985 on the Ratification of the United Nations Convention on the Law of the Sea.

33 Regulation V/33 of the International Convention for the Safety of Life at Sea, London, 1 November 1974, as amended.

34 Papanicolopulu, 'The Duty to Rescue at Sea'.

35 Chapter 2 of the International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, as amended.

36 Paragraph 2.1.7 of the Annex to the International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, as amended.

37 Presidential Regulation of the Republic of Indonesia Number 30 of 2012 on the Ratification of the International Convention on Maritime Search and Rescue, 1979.

38 Tanaka, *The International Law of the Sea*; Coppens and Somers, 'Towards New Rules on Disembarkation'.

39 Rothwell and Stephens, *The International Law of the Sea*.

40 Sodik, *Hukum Laut Internasional*.

The SAR Convention defines rescue as an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety.[41] The 2004 amendments to the SAR Convention and SOLAS added that the party responsible for the SRR in which assistance is rendered shall exercise primary responsibility for ensuring that coordination and cooperation occur, so that survivors are disembarked from the assisting ship and delivered to a place of safety.[42] Coppens and Somers explain that these amendments were adopted in response to disputes over disembarkation, but that they stop short of imposing an obligation on any particular state to accept the disembarkation of rescued persons on its territory.[43] Campàs Velasco argues that this gap should be filled by interpreting the concept of a place of safety in light of human rights and refugee law, so that disembarkation cannot take place in a location where rescued persons would face serious harm.[44] The application of this framework to irregular migrants has been the subject of extensive scholarly debate. Ghezelbash and others show that states have increasingly treated SAR incidents involving migrants through the lens of border security, with the result that rescue operations are combined with interception and enforcement.[45] Moreno-Lax, Ghezelbash, and Klein demonstrate that the framing of an incident determines which legal regime states choose to apply, and that a good-faith, systemic interpretation of overlapping legal norms is needed in order to save lives.[46] Klein argues for the harmonisation of the law of the sea, SAR law, refugee law, and human rights law in relation to maritime interceptions.[47] Galani adds that human rights obligations, including the due diligence obligation to protect life, apply to states in the conduct of SAR from the moment a distress call is received.[48] These insights indicate that the international framework of SAR cannot be applied to irregular migrants in isolation from human rights law and migration law.

The relevance of these insights to Southeast Asia must, however, be assessed with care. The comparative literature has developed primarily in response to the movement of asylum seekers towards Europe and Australia, where destination states have adopted deliberate policies of deterrence and interception.[49] The movement of Indonesian workers to and from Malaysia differs in important respects. The migrants are generally nationals of a neighbouring state, the distances involved are short, and the movement is embedded in long-standing patterns of labour mobility between the two countries.[50] Nevertheless, the core dynamic identified in the comparative literature, namely the tension between the humanitarian logic of rescue and the security logic of border control, is also present on Indonesia–Malaysia routes, where maritime agencies are tasked both with saving life and with preventing irregular entry and smuggling.[51] The comparative literature is therefore relevant not as a description of identical circumstances but as an illustration of the legal risks that arise when rescue and enforcement are not clearly distinguished.

The duty to rescue also has a temporal dimension that is particularly significant for small migrant vessels. Papanicolopulu emphasises that the duty to rescue requires prompt action, because the survival of persons in the water depends on the speed of the response.[52] Galani argues that a state which knows or ought to know of a situation of distress within its area of responsibility must take reasonable measures to respond, and that its failure to do so may engage its responsibility under

[41] Paragraph 1.3.2 of the Annex to the International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, as amended.
[42] Paragraph 3.1.9 of the Annex to the International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, as amended in 2004.
[43] Coppens and Somers, 'Towards New Rules on Disembarkation'.
[44] Campàs Velasco, 'Vulnerability and Marginalisation at Sea'.
[45] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'.
[46] Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'.
[47] Klein, 'A Case for Harmonizing Laws'.
[48] Galani, 'Human Rights Obligations'.
[49] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'; Klein, 'A Case for Harmonizing Laws'.
[50] Wahyudi, 'Illegal Journey'; Sulaksono, 'The Patterns of Human Trafficking'.
[51] Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'; Putri, Windiani, and Hanura, 'Kerjasama Indonesia, Malaysia Dan Singapura'.
[52] Papanicolopulu, 'The Duty to Rescue at Sea'.

human rights law.[53] These standards imply that delays caused by uncertainty over which state is responsible are not merely administrative inefficiencies, but may amount to failures to meet legal obligations. This is the legal significance of contested SRRs: they create conditions under which the duty of due diligence is at risk of being breached.

The anti-smuggling framework forms a further component of the international legal context. The Protocol against the Smuggling of Migrants by Land, Sea and Air requires states parties to criminalise the smuggling of migrants, but it also provides that migrants shall not become liable to criminal prosecution under the Protocol for the fact of having been the object of smuggling, and it requires states to take measures to preserve and protect the rights of smuggled migrants, including the right to life.[54] Indonesia ratified the Protocol through Law Number 15 of 2009.[55] Hartati examines how the Protocol has been implemented in Indonesia, the United Kingdom, and Australia, and shows that the criminalisation of smuggling has developed in response to its character as a transnational organised crime.[56] Sirait and Narwastuty argue that migrants who voluntarily agree to be smuggled should not be treated as perpetrators under international law, but that Indonesian national law has not been fully consistent with this approach.[57] The relationship between rescue and the non-criminalisation of smuggled migrants is therefore a central issue in the design of SAR cooperation.

The distinction between smuggling and trafficking is also relevant. Smuggled migrants consent to their movement, while victims of trafficking are moved through coercion, deception, or abuse of vulnerability for the purpose of exploitation. In practice, the two categories may overlap, and persons who begin their journey as smuggled migrants may become victims of trafficking along the way or upon arrival.[58] Sulaksono's study of the Riau Islands–Johor crossing shows that the patterns of trafficking affecting Indonesian migrant workers are complex and cannot be reduced to administrative irregularity.[59] This complexity reinforces the importance of screening rescued persons for indicators of trafficking, rather than treating all of them uniformly as immigration offenders.

At the regional level, the ASEAN Declaration on Cooperation in Search and Rescue of Persons and Vessels in Distress at Sea expresses the commitment of ASEAN member states to cooperate in SAR, including through information sharing, capacity building, and joint exercises.[60] The Declaration is a political instrument rather than a binding treaty, but it provides a regional framework within which bilateral arrangements can be developed. Klein's analysis of maritime security and the law of the sea shows that cooperation among states is central to addressing threats and risks in the maritime domain, including those associated with irregular migration by sea.[61]

At the national level, Indonesia's SAR framework is established by Law Number 29 of 2014 on Search and Rescue, which governs the organisation of SAR operations and assigns the coordination of SAR to the national SAR agency.[62] The law applies to accidents, disasters, and conditions that endanger human life, and it does not distinguish between persons according to their nationality or immigration status. Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers establishes the obligations of the state to protect Indonesian migrant workers before, during, and after their employment abroad.[63] Ratrika and Justinar show that Indonesia has taken a range of measures to protect undocumented Indonesian migrant workers who become victims of trafficking

53 Galani, 'Human Rights Obligations'.

54 Articles 5, 6, and 16 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

55 Law of the Republic of Indonesia Number 15 of 2009 on the Ratification of the Protocol against the Smuggling of Migrants by Land, Sea and Air.

56 Hartati, 'Criminalization of the Smuggling of Migrants'.

57 Sirait and Narwastuty, 'Dari Pelaku Ke Korban Penyelundupan'.

58 Sulaksono, 'The Patterns of Human Trafficking'; Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'.

59 Sulaksono, 'The Patterns of Human Trafficking'.

60 ASEAN Declaration on Cooperation in Search and Rescue of Persons and Vessels in Distress at Sea, Hanoi, 27 October 2010.

61 Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford: Oxford University Press, 2011).

62 Law of the Republic of Indonesia Number 29 of 2014 on Search and Rescue.

63 Law of the Republic of Indonesia Number 18 of 2017 on the Protection of Indonesian Migrant Workers.

in Malaysia, including repatriation and rehabilitation, although gaps remain.[64] Law Number 6 of 2011 on Immigration criminalises people smuggling, but Siahaan and Saragih show that its enforcement has faced difficulties in proving the involvement of organised, profit-driven networks.[6566]

Presidential Regulation Number 125 of 2016 on the Handling of Refugees from Abroad provides a further reference point. The regulation establishes procedures for the finding, sheltering, security, and supervision of refugees, including those found in distress at sea, and involves the national SAR agency in the response to emergencies at sea.[67] Syamsumardian shows that the regulation has become the principal basis for Indonesia's handling of refugees, although rising arrivals have placed increasing burdens on Indonesia as a transit country.[68] Asphianto and others find that Indonesia continues to respect the principle of non-refoulement in its response to Rohingya refugees in Aceh, but recommend that the regulation be updated.[69] Gunawan, Novendra, and Febrila examine whether Indonesia bears a legal duty to allow the disembarkation of Rohingya refugees, despite not being a party to the 1951 Refugee Convention.[70] Although the regulation concerns foreign refugees rather than Indonesian migrant workers, it illustrates how Indonesian law has linked rescue at sea to subsequent procedures of reception and protection.

Table 1 summarises the legal framework governing SAR for irregular labour migrants on Indonesia–Malaysia routes.

**Table 1.** Legal Framework of Search and Rescue for Irregular Labour Migrants on Indonesia–Malaysia Routes

| No. | Legal Instrument | Relevance to SAR for Irregular Labour Migrants |
|---|---|---|
| 1 | UNCLOS 1982 (Article 98), ratified by Law Number 17 of 1985 | Duty of flag states to require masters to render assistance; duty of coastal states to maintain SAR services and cooperate with neighbouring states through regional arrangements. |
| 2 | SOLAS 1974, as amended (Regulation V/33) | Masters must proceed with all speed to assist persons in distress regardless of their nationality, status, or circumstances. |
| 3 | SAR Convention 1979, as amended in 2004, ratified by Presidential Regulation Number 30 of 2012 | SRRs established by agreement without prejudice to boundaries; rescue coordination centres; rescue includes delivery to a place of safety; primary coordination responsibility of the SRR state. |
| 4 | Protocol against the Smuggling of Migrants (2000), ratified by Law Number 15 of 2009 | Criminalisation of smuggling; non-liability of migrants for having been smuggled; protection of the rights of smuggled migrants, including the right to life. |
| 5 | ASEAN Declaration on Cooperation in SAR (2010) | Political commitment to regional SAR cooperation, information sharing, capacity building, and joint exercises. |
| 6 | Law Number 29 of 2014 on Search and Rescue | National organisation of SAR and coordination by the national SAR agency, without distinction as to nationality or status. |

64 Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'.

65 Article 120 of Law of the Republic of Indonesia Number 6 of 2011 on Immigration, as amended.

66 Siahaan and Saragih, 'The Problems of Punishing People Smuggling Perpetrators'.

67 Presidential Regulation of the Republic of Indonesia Number 125 of 2016 on the Handling of Refugees from Abroad.

68 Lisda Syamsumardian, 'Tanggung Jawab Indonesia Terhadap Pengungsi Rohingya', *Jurnal Legislasi Indonesia*, 21.1 (2024), 1–14.

69 Aan Asphianto and others, 'Balancing International Legal Obligations, Human Rights, and National Interests: Indonesia's Response to Rohingya Refugees in Aceh', *Law Reform*, 22.1 (2026), 261–93 https://doi.org/10.14710/lr.v22i1.73197

70 Yordan Gunawan, Carissa Shifa Novendra, and Aldha Febrila, 'Indonesia's Responsibility towards Rohingya Refugees: Analysis of the 1951 Refugee Convention', *Legality: Jurnal Ilmiah Hukum*, 32.2 (2024), 182–94 https://doi.org/10.22219/ljih.v32i2.32164

| | | |
|---|---|---|
| 7 | Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers | State obligation to protect Indonesian migrant workers before, during, and after employment abroad. |
| 8 | Law Number 6 of 2011 on Immigration, as amended (Article 120) | Criminalisation of people smuggling in Indonesian law. |
| 9 | Presidential Regulation Number 125 of 2016 | Procedures for finding, sheltering, and supervising refugees, including those found in distress at sea. |

The legal framework shows that the obligation to rescue irregular labour migrants is firmly grounded in international and national law. It is grounded in the duty to render assistance under UNCLOS and SOLAS, which applies regardless of status; in the obligation of coastal states to provide SAR services and to cooperate with neighbours; in the SAR Convention's system of regions and coordination centres; and in Indonesia's own SAR legislation. The framework is, however, less complete with respect to the allocation of responsibility between neighbouring states in particular incidents, the obligation to accept disembarkation, and the relationship between rescue and migration enforcement. These are precisely the areas in which the problem of contested SRRs arises.

The national legal framework also reveals an imbalance between protection and enforcement. Indonesian law contains detailed provisions on the protection of migrant workers who travel through official channels, and it criminalises the smuggling of persons, but it says relatively little about the safety of those who travel irregularly by sea.[71] Ratrika and Justinar's analysis shows that protection measures for undocumented workers tend to be triggered once they are identified as victims of trafficking, rather than at the moment of rescue.[72] Saragih, Sabri, and Abu note that Indonesia's handling of irregular migrants combines humanitarian concerns with the need for criminal enforcement.[73] The challenge for legal design is to ensure that the humanitarian dimension is not subordinated to enforcement at the critical moment when lives are at risk.

### *The Architecture of Indonesia–Malaysia Search and Rescue Cooperation and the Problem of Contested Search and Rescue Regions*

Indonesia and Malaysia share one of the longest and most complex maritime interfaces in Southeast Asia. Their waters meet in the Malacca Strait, around the Riau Islands and Johor, in the South China Sea, and in the Sulawesi Sea off the eastern coast of Borneo. Each of these areas is a route of irregular labour migration. Sulaksono's study of the Riau Islands–Johor border crossing shows that Indonesian workers move across this short maritime distance in large numbers, and that some who enter and stay legally later become undocumented when their contracts are not renewed.[74] Warsono, Hanura, and Hanani examine irregular migration to Sabah and show that many agencies are involved in its prevention, but that their collaboration falls short because the coordinating institution lacks the capacity to direct all participants.[75] Wahyudi's account of the illegal journey of Indonesian undocumented workers to Malaysia confirms that sea crossings are an integral part of these migration networks.[76]

The legal architecture of SAR cooperation between the two states consists of several layers. At the multilateral level, both states are bound by the duty to render assistance under UNCLOS and SOLAS and participate in the system of SRRs established under the SAR Convention.[77] At the regional level, both are participants in the ASEAN SAR Declaration and in regional fora concerned with SAR and

[71] Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'; Siahaan and Saragih, 'The Problems of Punishing People Smuggling Perpetrators'.
[72] Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'.
[73] Saragih, Sabri, and Abu, 'Penegakan Hukum Terhadap Pelaku Penyelundupan Manusia'.
[74] Sulaksono, 'The Patterns of Human Trafficking'.
[75] Warsono, Hanura, and Hanani, 'International Collaborative Governance'.
[76] Wahyudi, 'Illegal Journey'.
[77] Tanaka, *The International Law of the Sea*; Rothwell and Stephens, *The International Law of the Sea*.

maritime safety.[78] At the bilateral level, cooperation has taken the form of joint exercises, coordination between rescue coordination centres, and communication between SAR and maritime enforcement agencies. At the national level, each state has designated authorities responsible for SAR coordination within its region. In Indonesia, this role is performed by the national SAR agency under Law Number 29 of 2014.[79]

The relationship between SAR authorities and maritime law enforcement agencies is a further feature of this architecture. In both states, a number of agencies operate at sea, including naval forces, coast guard or maritime enforcement agencies, marine police, customs, immigration, and fisheries authorities. These agencies are frequently the first to encounter vessels carrying irregular migrants, and their primary mandates are often directed towards enforcement rather than rescue. When such an agency encounters a vessel in distress, the duty to render assistance applies to it as much as to any other ship, but its institutional priorities may shape how it perceives and responds to the situation.[80] Effective SAR cooperation therefore requires not only coordination between the SAR authorities of the two states, but also coordination between SAR authorities and enforcement agencies within each state. Warsono, Hanura, and Hanani's finding that the many agencies involved in preventing irregular migration to Sabah lack effective coordination illustrates the difficulty of achieving such inter-agency coherence.[81]

This architecture differs significantly from the more institutionalised cooperation that the two states have developed in maritime security. Putri, Windiani, and Hanura show that Indonesia, Malaysia, and Singapore established the Malacca Strait Sea Patrol in 2004, the Eyes in the Sky air patrols in 2005, and an integrated framework for these arrangements in 2006, in order to address piracy and armed robbery against ships.[82] These arrangements are formalised, regularly operated, and supported by shared procedures. By contrast, the framework for SAR cooperation in relation to irregular migration has not been articulated in a comparably dedicated instrument in the published legal materials examined in this study. The contrast suggests that the two states have the institutional capacity to build structured maritime cooperation, but have not yet applied that capacity fully to the protection of life in irregular migration.

The reasons for this asymmetry are not difficult to identify. Piracy and armed robbery threaten international shipping and the commercial interests of the littoral states and user states alike, and cooperation against them has been encouraged by external pressure and by the strategic importance of the Malacca Strait.[83] The rescue of irregular migrants, by contrast, concerns persons whose movement both states seek to discourage, and whose rescue entails costs and responsibilities after disembarkation. Klein's analysis of maritime security shows that states tend to cooperate most readily where they perceive a shared threat.[84] The challenge for the reconstruction of SAR cooperation is therefore to frame the protection of life at sea as a shared interest, rather than as a burden to be allocated to the other state.

The problem of contested SRRs arises within this architecture in three principal ways. The first concerns geography and boundaries. In narrow straits and archipelagic waters, the distance between the coasts of the two states is short, and a vessel in distress may be located close to the line separating their SRRs. Arsana's analysis of the Malacca Strait shows that parts of the maritime boundary between Indonesia and Malaysia remain unresolved and that this situation has been associated with incidents at sea, including an incident in the Malacca Strait in April 2011.[85] Although the SAR Convention

[78] ASEAN Declaration on Cooperation in Search and Rescue of Persons and Vessels in Distress at Sea, Hanoi, 27 October 2010.
[79] Law of the Republic of Indonesia Number 29 of 2014 on Search and Rescue.
[80] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'; Klein, *Maritime Security and the Law of the Sea*.
[81] Warsono, Hanura, and Hanani, 'International Collaborative Governance'.
[82] Putri, Windiani, and Hanura, 'Kerjasama Indonesia, Malaysia Dan Singapura'.
[83] Putri, Windiani, and Hanura, 'Kerjasama Indonesia, Malaysia Dan Singapura'; Klein, *Maritime Security and the Law of the Sea*.
[84] Klein, *Maritime Security and the Law of the Sea*.
[85] Arsana, 'Good Fences Make Good Neighbours'.

provides that the delimitation of SRRs does not prejudice maritime boundaries, uncertainty over boundaries may nonetheless affect the willingness of authorities to act in areas that the other state regards as falling within its jurisdiction.[86] Khan shows that the absence of delimitation in disputed maritime areas tends to generate uncertainty concerning law enforcement and jurisdiction, and identifies SAR as a field in which cooperation can be pursued without prejudice to sovereignty claims.[87]

The second concerns the allocation of responsibility in particular incidents. The SAR Convention assigns primary responsibility for coordination to the state responsible for the SRR in which assistance is rendered, but distress situations involving irregular migrants frequently involve vessels that move between regions, that do not issue distress calls, or that are detected by authorities of a state other than the one responsible for the region. Coppens and Somers note that the system relies on cooperation among states rather than on rigid rules that determine in every case which state must act.[88] Where cooperation fails, each state may regard the other as primarily responsible, with the result that the response is delayed. Galani's emphasis on due diligence from the moment of the distress call highlights the legal significance of such delays.[89]

The third concerns the consequences of rescue. Rescue is followed by disembarkation, identification, and decisions about immigration status, criminal investigation, and repatriation. When a vessel carrying Indonesian irregular migrant workers is rescued, the question arises whether rescued persons should be disembarked in Malaysia, where they may face immigration detention and prosecution, or in Indonesia, where they may be returned to their communities but where investigations into their smugglers will also take place. Ghezelbash and others show that, where rescue is closely tied to enforcement, states may be tempted to avoid or redirect rescue in order to avoid the consequences of disembarkation.[90] Moreno-Lax, Ghezelbash, and Klein show that the framing of incidents as security matters rather than humanitarian ones may shape the choice of responses.[91] In this sense, contestation over SRRs is not only a matter of maps; it is also a matter of responsibility for what happens to rescued persons.

These three sources of contestation may be illustrated by a typical scenario. A small boat carrying Indonesian workers departs at night from the coast of Johor towards the Riau Islands, or in the opposite direction, without navigation lights or communication equipment. It begins to take on water close to the line separating the two SRRs. A passing fishing vessel or a coastal resident raises the alarm with the authorities of one state, which must then determine whether the incident lies within its region, whether to contact the other state, and whether its own assets are closer. If the vessel drifts across the line, the responsible centre changes. If survivors are recovered, the authorities must decide where to land them and whether they are to be treated as victims, immigration offenders, or witnesses in a smuggling case. Each of these decisions involves legal uncertainty, and each moment of uncertainty consumes time that the persons in the water may not have.[92]

Regional experience illustrates the risk. During the 2015 Andaman Sea crisis, states in the region initially pushed back or refused to land boats carrying migrants, and only later agreed to provide temporary shelter.[93] Thom shows that the eventual landing of Rohingya in Aceh was handled through ad hoc local arrangements rather than a coherent national or regional system.[94] Tanu, Missbach, and Lumenta situate these events within the broader pattern of forced migration and protracted transit

[86] Paragraph 2.1.7 of the Annex to the International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, as amended.
[87] Khan, 'Law Enforcement Issues in the Disputed Maritime Areas'.
[88] Coppens and Somers, 'Towards New Rules on Disembarkation'.
[89] Galani, 'Human Rights Obligations'.
[90] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'.
[91] Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'.
[92] Coppens and Somers, 'Towards New Rules on Disembarkation'; Galani, 'Human Rights Obligations'; Sulaksono, 'The Patterns of Human Trafficking'.
[93] Gleeson, 'Unprecedented but Unfulfilled'.
[94] Thom, 'The May 2015 Boat Crisis'.

in Indonesia and Southeast Asia.[95] Missbach's study of asylum seekers stuck in Indonesia shows how the position of Indonesia as a transit country shapes its responses to irregular arrivals.[96] Although the Andaman crisis involved refugees rather than labour migrants, it demonstrated that the absence of agreed regional procedures for rescue and disembarkation can lead to delays that endanger life.

The Indonesian response to subsequent arrivals of Rohingya boats confirms that disembarkation remains a contested issue even within a single state. Gunawan, Novendra, and Febrila examine the refusal of local residents in Aceh to allow a boat carrying more than two hundred Rohingya to land in early 2024 and the call by the United Nations refugee agency for their disembarkation.[97] Asphianto and others show that the Indonesian government has sought to balance its international obligations, human rights commitments, and domestic interests in its response, and has continued to observe the principle of non-refoulement.[98] Syamsumardian notes that the growing number of arrivals has increased the burden on Indonesia as a transit state.[99] These experiences show that the question of where rescued persons are to be landed is influenced not only by law but also by local politics and public opinion, which underlines the importance of clear, pre-agreed procedures.

The specific character of labour migration also shapes the problem. Unlike refugees fleeing persecution, Indonesian irregular migrant workers are nationals of one of the two states concerned, and Indonesia bears obligations to protect them under Law Number 18 of 2017.[100] Malaysia, as the state of destination or departure, has its own immigration and labour laws that apply to undocumented workers. Kurniati and Abdillah show that Malaysia's centralised and employer-oriented system leaves migrant workers exposed to exploitation, while Indonesia's enforcement is fragmented across regions.[101] Prianto, Amri, and Ajis show that the bilateral memorandum of understanding on migrant workers serves as the foundation of cooperation between government institutions of the two countries, and introduced a one-channel recruitment system whose implementation has been uneven.[102] The bilateral framework on labour migration thus exists, but it is focused on recruitment and placement rather than on the safety of irregular journeys at sea.

The return journey from Malaysia to Indonesia deserves particular attention. Irregular migration is not only a matter of departure from Indonesia; many undocumented workers return home by sea outside official channels, particularly when regular return procedures are costly, slow, or punitive.[103] Vessels carrying returning workers face the same risks as those carrying departing workers, and their passengers may be equally reluctant to seek assistance from the authorities for fear of detention or penalties. A SAR framework designed for labour migration must therefore address movements in both directions, and must recognise that the persons on board may include workers with expired permits, workers who became undocumented through no fault of their own, and victims of trafficking or exploitation.[104]

Figure 1 depicts the chain of SAR responsibilities and the points at which contestation arises.

The figure shows that SAR is a chain of interdependent stages, beginning with the distress alert and ending with post-rescue protection. Contestation may arise at each stage: at the coordination stage because of uncertainty over the responsible SRR, at the rescue stage because of the entanglement of rescue with enforcement, and at the disembarkation stage because of the absence of agreed rules on the landing state. A weakness at any stage can break the chain and endanger the lives and rights of the persons concerned.

95 Tanu, Missbach, and Lumenta, 'Introduction: Forced Migration and Protracted Transit'.
96 Missbach, *Troubled Transit*.
97 Gunawan, Novendra, and Febrila, 'Indonesia's Responsibility towards Rohingya Refugees'.
98 Asphianto and others, 'Balancing International Legal Obligations'.
99 Syamsumardian, 'Tanggung Jawab Indonesia'.
100 Law of the Republic of Indonesia Number 18 of 2017 on the Protection of Indonesian Migrant Workers.
101 Kurniati and Abdillah, 'Comparative Labor Law Studies'.
102 Prianto, Amri, and Ajis, 'Governance and Protection of Indonesian Migrant Workers'.
103 Wahyudi, 'Illegal Journey'; Sulaksono, 'The Patterns of Human Trafficking'.
104 Sulaksono, 'The Patterns of Human Trafficking'; Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'.

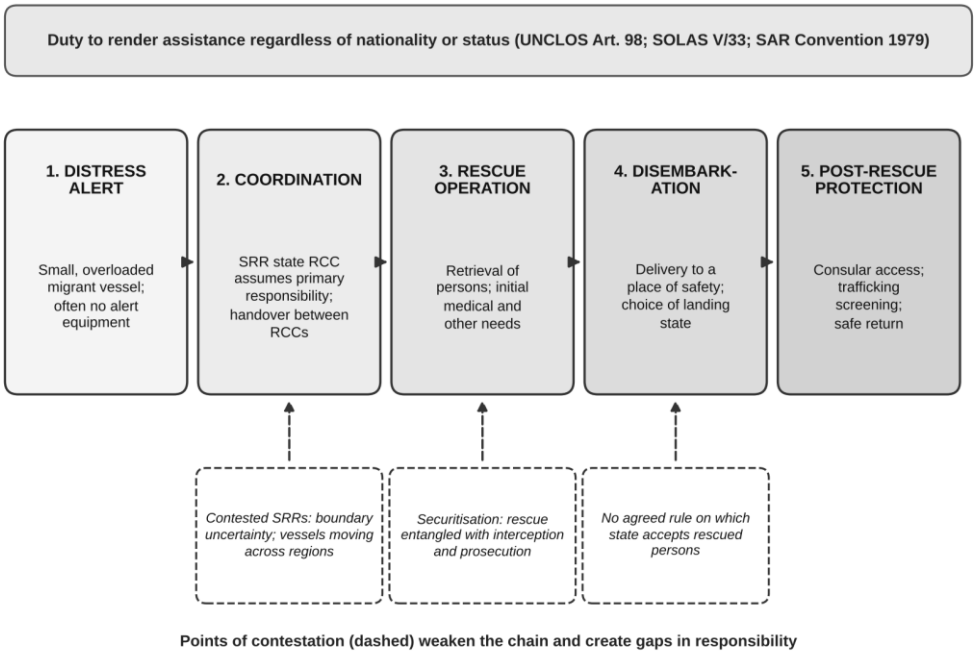



**Figure 1.** Chain of SAR responsibilities and points of contestation on Indonesia–Malaysia maritime routes

### *Weaknesses of Existing Search and Rescue Cooperation*

The analysis of the legal framework and the architecture of cooperation reveals six principal weaknesses in existing Indonesia–Malaysia SAR cooperation as it applies to irregular labour migration.

**First, the absence of a dedicated bilateral SAR instrument.** Although both states are bound by the multilateral SAR framework and participate in regional SAR cooperation, the published legal materials examined in this study do not reveal a dedicated, publicly available bilateral agreement that sets out in detail the allocation of SAR responsibility between the two states, the procedures for coordination between their rescue coordination centres, and the rules applicable to incidents involving irregular migrants. Article 98 paragraph (2) of UNCLOS expressly contemplates cooperation with neighbouring states through mutual regional arrangements.[105] The SAR Convention similarly encourages parties to conclude agreements with neighbouring states concerning SRRs and the coordination of operations.[106] Tanaka and Rothwell and Stephens both note that the effectiveness of the SAR regime depends heavily on such cooperative arrangements.[107] The absence of a dedicated instrument leaves cooperation dependent on informal practice and goodwill.

**Second, the residual uncertainty arising from maritime boundaries.** Although SRRs are legally distinct from maritime boundaries, the unresolved status of parts of the boundary between the two states contributes to uncertainty in practice.[108] Law enforcement incidents in disputed areas show that the presence of vessels of one state in waters claimed by the other can generate diplomatic friction.[109] In the absence of clear arrangements that insulate SAR from boundary disputes, authorities may hesitate to act promptly in areas close to contested lines. Sodik explains that the implementation of the law of the sea in Indonesian law involves the delineation of maritime zones

[105] Article 98 paragraph (2) of the United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982.
[106] Chapter 3 of the International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, as amended.
[107] Tanaka, *The International Law of the Sea*; Rothwell and Stephens, *The International Law of the Sea*.
[108] Arsana, 'Good Fences Make Good Neighbours'.
[109] Arsana, 'Good Fences Make Good Neighbours'; Khan, 'Law Enforcement Issues in the Disputed Maritime Areas'.

in which different rights and jurisdictions apply.[110] SAR, by contrast, requires a functional approach in which the preservation of life takes precedence over questions of jurisdiction.

**Third, the dominance of security and anti-smuggling approaches.** The maritime cooperation of Indonesia and Malaysia has been organised primarily around security threats such as piracy, armed robbery, and smuggling.[111] In relation to irregular migration, the dominant legal response has been the criminalisation of people smuggling.[112] Saragih, Sabri, and Abu show that Indonesia's position as a transit route makes the handling of irregular migrants a matter of both humanitarian concern and serious criminal enforcement.[113] Ghezelbash and others warn that the securitisation of SAR weakens its humanitarian objectives, because rescue becomes entangled with interception, deterrence, and prosecution.[114] When the same agencies that are responsible for enforcement are also responsible for rescue, and when rescued persons are immediately treated as suspects or immigration offenders, migrants and their smugglers may avoid calling for help, and authorities may face conflicting priorities.[115] Sirait and Narwastuty's argument for the non-criminalisation of smuggled migrants underlines the importance of separating the treatment of migrants from that of smugglers.[116]

The difficulty is compounded by the fact that boat operators are often themselves low-level participants in smuggling networks, sometimes recruited from fishing communities, while the organisers remain onshore. Siahaan and Saragih show that Indonesian prosecutions have struggled to reach the organised networks behind people smuggling, and that enforcement has not become noticeably more effective since the enactment of the 2011 immigration law.[117] Hartati's analysis of the criminalisation of smuggling confirms that the transnational character of the crime requires cooperation between states of origin, transit, and destination.[118] A SAR framework that encourages early distress alerts, by reducing the fear of immediate prosecution, could also produce better information for investigations of the networks that place migrants at risk.

**Fourth, the absence of agreed disembarkation and post-rescue protection procedures.** The SAR Convention requires that rescued persons be delivered to a place of safety, but it does not determine which state must accept them.[119] Campàs Velasco shows that a narrow reading of the place of safety concept may deepen the vulnerability of rescued migrants.[120] For Indonesian irregular migrant workers, the absence of agreed procedures means that their treatment after rescue depends on where they happen to be landed and on the practices of the authorities involved. Ratrika and Justinar's analysis shows that Indonesia has developed measures for the repatriation and rehabilitation of trafficked migrant workers, but that facilities such as victim-centred shelters remain inadequate.[121] Sulaksono's finding that many workers become undocumented through no fault of their own reinforces the case for treating rescued workers as persons in need of protection rather than primarily as offenders.[122] An agreed post-rescue protocol would link SAR to the protection obligations of Indonesia under Law Number 18 of 2017 and to the screening of trafficking victims.[123]

**Fifth, fragmented data, communication, and coordination.** SAR depends on timely information about vessels at risk. Irregular migrant vessels are often small, lack communication equipment, and travel at night to avoid detection. The literature on the governance of Indonesian migrant workers

[110] Sodik, *Hukum Laut Internasional.*
[111] Putri, Windiani, and Hanura, 'Kerjasama Indonesia, Malaysia Dan Singapura'.
[112] Hartati, 'Criminalization of the Smuggling of Migrants'; Siahaan and Saragih, 'The Problems of Punishing People Smuggling Perpetrators'; Saragih, Sabri, and Abu, 'Penegakan Hukum Terhadap Pelaku Penyelundupan Manusia'.
[113] Saragih, Sabri, and Abu, 'Penegakan Hukum Terhadap Pelaku Penyelundupan Manusia'.
[114] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'.
[115] Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'.
[116] Sirait and Narwastuty, 'Dari Pelaku Ke Korban Penyelundupan'.
[117] Siahaan and Saragih, 'The Problems of Punishing People Smuggling Perpetrators'.
[118] Hartati, 'Criminalization of the Smuggling of Migrants'.
[119] Coppens and Somers, 'Towards New Rules on Disembarkation'.
[120] Campàs Velasco, 'Vulnerability and Marginalisation at Sea'.
[121] Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'.
[122] Sulaksono, 'The Patterns of Human Trafficking'.
[123] Law of the Republic of Indonesia Number 18 of 2017 on the Protection of Indonesian Migrant Workers.

in Malaysia shows that cooperation among institutions remains uneven and dependent on the commitment of each party.[124] Warsono, Hanura, and Hanani's finding that collaborative governance in preventing irregular migration is weakened by the limited capacity of the coordinating institution suggests that similar problems are likely to affect SAR coordination.[125] There is no publicly available joint database of incidents involving irregular migrant vessels on Indonesia–Malaysia routes, which limits the ability of both states to identify high-risk routes, plan patrols and rescue assets, and evaluate their responses.

**Sixth, limited accountability and transparency.** When a vessel carrying irregular migrants is lost, the question of whether the responsible authorities responded with due diligence is difficult to answer without transparent records of distress alerts, decisions, and actions. Galani's analysis of human rights obligations in SAR emphasises that states must be able to demonstrate that they took all reasonable measures from the moment they knew or ought to have known of the distress.[126] Ghezelbash and others identify weak transparency and accountability as a common feature of securitised SAR regimes.[127] Without mechanisms for joint investigation of fatal incidents, families of victims have limited avenues to learn what happened, and lessons are not systematically incorporated into practice.

The question of accountability is closely related to the identification of victims and the treatment of the dead. When irregular migrant vessels sink, the identity of those on board is often unknown, because passengers travel without documents and smugglers keep no records. Families in Indonesia may not know whether their relatives were on board, and the authorities of the state where bodies are recovered may lack the information needed to identify them. Indonesia's obligations to protect its migrant workers, which extend to those who have died abroad, imply a responsibility to cooperate in identification and repatriation of remains.[128]

Identification also has evidentiary value. Information about the identity and origin of victims can help authorities trace recruitment networks and prosecute those responsible, while also enabling families to obtain the support and compensation to which they may be entitled. Joint procedures for the collection of information, consistent with data protection standards, would therefore serve both humanitarian and law enforcement purposes.[129] Kurniati and Abdillah's finding that the governance of migrant workers in both states is weakened by fragmented institutions suggests that such cooperation cannot be assumed.[130] A reconstructed framework must therefore address not only the rescue of the living but also the identification and dignified treatment of the dead.

Accountability also depends on independent scrutiny. Parliamentary oversight, national human rights institutions, and the judiciary all have roles to play in ensuring that SAR authorities fulfil their obligations. Under international human rights law, the right to life has a procedural dimension that includes an obligation to investigate deaths that may have resulted from a failure to protect; Galani's argument that human rights obligations apply throughout SAR operations suggests that this dimension is relevant to deaths at sea.[131] The institutionalisation of independent review would strengthen public confidence in the SAR system and provide an incentive for continuous improvement.

These six weaknesses interact with one another. The absence of a dedicated instrument leaves boundary uncertainty unaddressed; boundary uncertainty and securitisation discourage prompt rescue; the absence of disembarkation procedures increases the incentives to avoid responsibility; and fragmented data and limited accountability make it difficult to identify and correct these problems. Table 2 summarises the weaknesses and their consequences.

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[124] Prianto, Amri, and Ajis, 'Governance and Protection of Indonesian Migrant Workers'; Warsono, Hanura, and Hanani, 'International Collaborative Governance'.

[125] Warsono, Hanura, and Hanani, 'International Collaborative Governance'.

[126] Galani, 'Human Rights Obligations'.

[127] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'.

[128] Law of the Republic of Indonesia Number 18 of 2017 on the Protection of Indonesian Migrant Workers.

[129] Siahaan and Saragih, 'The Problems of Punishing People Smuggling Perpetrators'; Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'.

[130] Kurniati and Abdillah, 'Comparative Labor Law Studies'.

[131] Galani, 'Human Rights Obligations'.

It should be emphasised that these weaknesses do not imply that the SAR authorities of Indonesia and Malaysia fail to respond to distress incidents. Both states maintain SAR services and have engaged in joint exercises and operational cooperation.[132] The weaknesses concern the legal design of cooperation, namely the extent to which responsibilities, procedures, and protections are fixed in advance and are capable of withstanding the pressures that arise when rescue involves irregular migrants. Legal design matters precisely because it determines how institutions behave under conditions of uncertainty and conflicting incentives.[133]

The weaknesses are also not unique to the Indonesia–Malaysia relationship. The comparative literature shows that similar problems have arisen in the Mediterranean, where disputes over responsibility for rescue and disembarkation between neighbouring states have led to prolonged stand-offs at sea, and in offshore Australia, where rescue has been closely integrated with border protection operations.[134] Coppens and Somers' account of the 2004 amendments shows that the international community has recognised the problem of disembarkation but has not resolved it fully at the multilateral level.[135] Klein's call for harmonisation of the legal regimes applicable to maritime interceptions reflects the same concern.[136] The experience of other regions suggests that, in the absence of clear bilateral or regional arrangements, the gaps in the multilateral framework are likely to be filled by unilateral practices that prioritise the interests of individual states over the protection of life. Indonesia and Malaysia have the opportunity to avoid this outcome by establishing a cooperative framework before a major disaster forces them to do so.

**Table 2.** Weaknesses of Existing Indonesia–Malaysia Search and Rescue Cooperation

| No. | Weakness | Consequence for the Protection of Life and Rights |
|---|---|---|
| 1 | No dedicated bilateral SAR instrument | Cooperation depends on informal practice and goodwill; responsibilities and procedures are not fixed in advance. |
| 2 | Residual uncertainty arising from maritime boundaries | Hesitation to act near contested lines; risk of diplomatic friction during operations. |
| 3 | Dominance of security and anti-smuggling approaches | Rescue entangled with interception and prosecution; migrants and smugglers may avoid calling for help. |
| 4 | No agreed disembarkation and post-rescue protocols | Treatment of rescued workers depends on place of landing; incentives to avoid responsibility; weak screening for trafficking. |
| 5 | Fragmented data, communication, and coordination | High-risk routes and incidents are not systematically identified; delayed responses. |
| 6 | Limited accountability and transparency | Due diligence of responses cannot be verified; lessons from fatal incidents are not institutionalised. |

### *Reconstructing Bilateral Search and Rescue Cooperation: A Proposed Model*

The weaknesses identified above call for a reconstruction of bilateral SAR cooperation between Indonesia and Malaysia. The proposed model consists of five pillars, each of which responds to one or more of the weaknesses and draws on the international legal framework and the literature examined in this study.

**Pillar one: a dedicated bilateral SAR agreement.** The first pillar is the conclusion of a dedicated bilateral SAR agreement between Indonesia and Malaysia, implementing Article 98 paragraph (2) of

[132] Tanaka, *The International Law of the Sea*; Rothwell and Stephens, *The International Law of the Sea*.
[133] Klein, 'A Case for Harmonizing Laws'; Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'.
[134] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'; Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'.
[135] Coppens and Somers, 'Towards New Rules on Disembarkation'.
[136] Klein, 'A Case for Harmonizing Laws'.

UNCLOS and Chapter 3 of the SAR Convention.[137] The agreement should confirm the limits of each state's SRR in the waters between them, establish procedures for coordination between their rescue coordination centres, provide for the entry of SAR units of one state into the territorial sea or SRR of the other for the purpose of rescue, and set out communication channels and response times. It should state expressly that its provisions are without prejudice to the delimitation of maritime boundaries, in line with the SAR Convention.[138] Khan's observation that SAR can be pursued as a field of cooperation separable from sovereignty disputes supports this approach.[139] The experience of the coordinated patrols in the Malacca Strait shows that the two states are capable of building formal, operational maritime arrangements.[140]

**Pillar two: clear allocation of coordination responsibility.** The second pillar is a set of rules that determine which state assumes coordination responsibility in particular situations. Building on the SAR Convention, the agreement should provide that the state in whose SRR a distress incident occurs assumes coordination, but that the rescue coordination centre that first receives information about an incident must act on it until responsibility has been formally accepted by the other centre. For incidents close to the line between regions, or in areas of boundary uncertainty, the agreement should provide a default rule, such as responsibility for the state whose centre first receives the alert, in order to prevent gaps.[141] Such rules would transform contested SRRs into areas of shared responsibility, in which the default is action rather than inaction.

The allocation rules should be complemented by provisions on the use of assets and on cost. In narrow waters, the nearest rescue unit may belong to the state that is not formally responsible for the SRR. The agreement should therefore authorise and encourage the deployment of the nearest suitable unit, irrespective of the region in which the incident occurs, with coordination being transferred or shared as appropriate. It should also provide that each state bears its own costs of SAR operations, so that financial considerations do not delay a response. Such provisions would give practical effect to the obligation of coastal states under Article 98 paragraph (2) of UNCLOS to cooperate with neighbouring states in the provision of SAR services.[142][143] Rothwell and Stephens' account of the functional character of SAR obligations supports a design in which responsibility follows the capacity to respond rather than formal jurisdiction alone.[144]

**Pillar three: a humanitarian firewall between rescue and enforcement.** The third pillar is the separation of rescue from migration and criminal enforcement. The agreement and national implementing rules should provide that SAR operations are conducted solely for the purpose of saving life, that the status of rescued persons as irregular migrants does not affect the obligation to rescue them, and that information gathered in the course of rescue is used for enforcement only after the persons concerned have been delivered to a place of safety and their immediate needs have been met.[145] This firewall would give effect to SOLAS's rule that assistance must be provided regardless of the nationality or status of persons in distress.[146] It would also reflect the principle of the Smuggling Protocol that migrants are not to be prosecuted for the fact of having been smuggled,

[137] Article 98 paragraph (2) of the United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982; Chapter 3 of the International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, as amended.

[138] Paragraph 2.1.7 of the Annex to the International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, as amended.

[139] Khan, 'Law Enforcement Issues in the Disputed Maritime Areas'.

[140] Putri, Windiani, and Hanura, 'Kerjasama Indonesia, Malaysia Dan Singapura'.

[141] Coppens and Somers, 'Towards New Rules on Disembarkation'; Galani, 'Human Rights Obligations'.

[142] Article 98 paragraph (2) of the United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982.

[143] Tanaka, *The International Law of the Sea*.

[144] Rothwell and Stephens, *The International Law of the Sea*.

[145] Papanicolopulu, 'The Duty to Rescue at Sea'; Ghezelbash and others, 'Securitization of Search and Rescue at Sea'.

[146] Regulation V/33 of the International Convention for the Safety of Life at Sea, London, 1 November 1974, as amended.

while preserving the ability of both states to prosecute smugglers.[147][148] Siahaan and Saragih's finding that enforcement against smuggling networks has been weak suggests that information obtained after rescue, properly safeguarded, could strengthen investigations of organisers rather than of migrants.[149] The humanitarian firewall also has a communicative dimension. If migrants and boat operators believe that calling for help will lead to arrest, detention, or prosecution, they will delay calling for help until it is too late. A clear and publicly communicated rule that rescue takes priority, and that persons rescued will be treated first as survivors, could reduce this deterrent effect. Ghezelbash and others show that, where SAR is perceived as an instrument of border control, the trust on which effective rescue depends is eroded.[150] Moreno-Lax, Ghezelbash, and Klein argue that the framing of incidents through the lens of life rather than security is essential to the integrity of the SAR regime.[151] In the Indonesia–Malaysia context, the communication of such a rule through community outreach in areas of origin and transit, as well as through the networks on which migrants rely, could make a meaningful difference to the timeliness of distress alerts.[152]

**Pillar four: agreed disembarkation and post-rescue protection protocols.** The fourth pillar is an agreed protocol for disembarkation and post-rescue protection. For Indonesian nationals, the protocol should provide for prompt consular notification and access, screening for trafficking and exploitation, medical care, and, where appropriate, safe and dignified return to Indonesia. It should determine the place of disembarkation by reference to the safety and needs of rescued persons, consistent with a human rights-informed reading of the place of safety concept.[153] It should link the response to Indonesia's obligations under Law Number 18 of 2017 and to the services available for trafficking victims.[154][155] For non-Indonesian persons rescued on the same routes, including refugees, the protocol should refer to the procedures established under Presidential Regulation Number 125 of 2016 and to the principle of non-refoulement, which Indonesia has continued to observe.[156][157] The lessons of the Andaman crisis show that agreed disembarkation arrangements are essential to prevent rescued persons from being left at sea.[158]

For Indonesian workers rescued in Malaysian waters, a key question is whether they should be disembarked in Malaysia or transferred to Indonesia. The protocol should establish a presumption in favour of the nearest place of safety, in order to minimise the time that survivors spend at sea, combined with a procedure for prompt transfer to Indonesian authorities where the persons concerned wish to return. Malaysia's immigration laws would continue to apply, but the protocol should provide that survivors of maritime accidents are not to be subjected to punitive measures for the irregularity of their journey before their protection needs have been assessed. Indonesia, for its part, should commit to receiving its nationals promptly and to providing the reintegration services required under its migrant worker protection law.[159] Such an arrangement would reflect the shared responsibility of the two states for a migration corridor that serves the economic interests of both.[160]

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147 Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

148 Sirait and Narwastuty, 'Dari Pelaku Ke Korban Penyelundupan'; Hartati, 'Criminalization of the Smuggling of Migrants'.

149 Siahaan and Saragih, 'The Problems of Punishing People Smuggling Perpetrators'.

150 Ghezelbash and others, 'Securitization of Search and Rescue at Sea'.

151 Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'.

152 Wahyudi, 'Illegal Journey'.

153 Campàs Velasco, 'Vulnerability and Marginalisation at Sea'; Galani, 'Human Rights Obligations'.

154 Law of the Republic of Indonesia Number 18 of 2017 on the Protection of Indonesian Migrant Workers.

155 Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'.

156 Presidential Regulation of the Republic of Indonesia Number 125 of 2016 on the Handling of Refugees from Abroad.

157 Asphianto and others, 'Balancing International Legal Obligations'; Gunawan, Novendra, and Febrila, 'Indonesia's Responsibility towards Rohingya Refugees'; Syamsumardian, 'Tanggung Jawab Indonesia'.

158 Gleeson, 'Unprecedented but Unfulfilled'; Thom, 'The May 2015 Boat Crisis'.

159 Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'; Prianto, Amri, and Ajis, 'Governance and Protection of Indonesian Migrant Workers'.

160 Kurniati and Abdillah, 'Comparative Labor Law Studies'.

**Pillar five: joint information and accountability mechanisms.** The fifth pillar is a joint system of information sharing, data collection, and accountability. The two states should maintain a shared record of distress incidents involving irregular migrant vessels, including the time of alerts, the actions taken, and the outcomes, and should use this information to identify high-risk routes and plan the positioning of rescue assets. They should conduct regular joint exercises focused specifically on mass rescue of migrants from small vessels. Fatal incidents should be subject to joint review, with findings shared with the families of victims and used to improve procedures.[161] Such mechanisms would also support the collaborative governance of migration, which the literature shows is hampered by limited coordination capacity.[162]

The information system should be designed with appropriate safeguards. Data about rescued persons may be sensitive, particularly where they are potential victims of trafficking or where disclosure could expose them to reprisals by smuggling networks. Data collected for SAR purposes should therefore be used primarily to improve rescue and protection, with access for law enforcement subject to clear legal conditions. Aggregated data on incidents, routes, and outcomes, by contrast, should be published regularly in order to support research, public debate, and policy development. Such a balance between confidentiality and transparency reflects the dual objectives of protecting individuals and ensuring accountability.[163]

These five pillars should be embedded in a broader framework of bilateral cooperation on labour migration. The bilateral memorandum of understanding on migrant workers provides an existing platform through which the safety of migration journeys could be addressed alongside recruitment and placement.[164] Kurniati and Abdillah's call for closer bilateral cooperation and alignment with international labour standards supports the inclusion of journey safety within that platform.[165] Wahyudi's recommendation that both countries strengthen rights protection and governance points in the same direction.[166] At the same time, addressing the root causes of irregular migration, including the cost and complexity of regular channels, remains essential to reduce the number of dangerous crossings.[167]

The proposed model is also consistent with the regional framework. The ASEAN SAR Declaration provides a political basis for bilateral agreements that operationalise regional commitments.[168] A bilateral agreement between Indonesia and Malaysia could serve as a model for other states in the region, and could contribute to the development of regional procedures that were found lacking during the Andaman crisis.[169] Klein's work on maritime security shows that cooperative arrangements in the maritime domain can respect sovereignty while enabling effective joint action.[170]

A bilateral approach also has advantages over waiting for a comprehensive regional instrument. Regional negotiations involve many states with differing interests, and the experience of the post-Andaman commitments shows that regional responses may remain unfulfilled.[171] A bilateral agreement between two states that share a specific migration corridor can be tailored to the geography, institutions, and migration patterns of that corridor. Once tested, it can be extended or adapted by other pairs of states, contributing to regional practice from the bottom up. Tanu, Missbach, and Lumenta's account of protracted transit in Southeast Asia illustrates the extent to

[161] Galani, 'Human Rights Obligations'; Ghezelbash and others, 'Securitization of Search and Rescue at Sea'.
[162] Warsono, Hanura, and Hanani, 'International Collaborative Governance'; Prianto, Amri, and Ajis, 'Governance and Protection of Indonesian Migrant Workers'.
[163] Galani, 'Human Rights Obligations'; Ratrika and Justinar, 'Perlindungan Pekerja Migran Ilegal Indonesia'.
[164] Prianto, Amri, and Ajis, 'Governance and Protection of Indonesian Migrant Workers'.
[165] Kurniati and Abdillah, 'Comparative Labor Law Studies'.
[166] Wahyudi, 'Illegal Journey'.
[167] Wahyudi, 'Illegal Journey'; Sulaksono, 'The Patterns of Human Trafficking'.
[168] ASEAN Declaration on Cooperation in Search and Rescue of Persons and Vessels in Distress at Sea, Hanoi, 27 October 2010.
[169] Gleeson, 'Unprecedented but Unfulfilled'; Tanu, Missbach, and Lumenta, 'Introduction: Forced Migration and Protracted Transit'.
[170] Klein, *Maritime Security and the Law of the Sea*.
[171] Gleeson, 'Unprecedented but Unfulfilled'.

which migration in the region is shaped by the policies of particular states and their neighbours, which supports a focus on bilateral solutions.[172]
Table 3 summarises the proposed model.

**Table 3.** Proposed Model of Bilateral Search and Rescue Cooperation

| No. | Pillar | Core Elements |
|---|---|---|
| 1 | Dedicated bilateral SAR agreement | Confirmation of SRR limits; coordination procedures between rescue coordination centres; entry of SAR units; without-prejudice clause on boundaries. |
| 2 | Clear allocation of coordination responsibility | SRR state coordinates; first-alerted centre acts until handover is accepted; default rule for areas near or across contested lines. |
| 3 | Humanitarian firewall | Rescue solely to save life; status irrelevant to rescue; enforcement only after delivery to a place of safety; non-criminalisation of smuggled migrants. |
| 4 | Disembarkation and post-rescue protection protocol | Safety-based choice of place of disembarkation; consular access; trafficking screening; medical care; safe return; non-refoulement for refugees. |
| 5 | Joint information and accountability mechanisms | Shared incident records; risk mapping; joint mass-rescue exercises; joint review of fatal incidents; information for families. |

The reconstructed model can be implemented progressively. In the short term, the SAR authorities of the two states can adopt operational procedures on coordination, communication, and default responsibility, together with joint exercises focused on migrant vessels. In the medium term, the two governments can negotiate a dedicated bilateral SAR agreement incorporating the five pillars, accompanied by national implementing regulations, including amendments or guidelines under Law Number 29 of 2014 and Law Number 18 of 2017. In the longer term, the bilateral model can inform regional instruments under ASEAN. This staged approach allows immediate improvements in the protection of life while building towards a durable legal framework.
The reconstruction proposed in this study also has implications for Indonesian national law. Law Number 29 of 2014 establishes the national SAR system but does not contain specific provisions on cooperation with neighbouring states in incidents involving irregular migrants, nor on the relationship between SAR and immigration enforcement.[173] Implementing regulations could clarify that SAR operations take priority over enforcement, that information obtained during rescue is subject to safeguards, and that the national SAR agency coordinates with the agencies responsible for migrant worker protection when survivors are Indonesian workers. Law Number 18 of 2017 could similarly be implemented through guidelines on the protection of workers rescued at sea, including consular assistance, screening, and reintegration.[174] Sodik's account of the implementation of the law of the sea in Indonesian law indicates that national legislation is the principal means through which international obligations at sea are given operational effect.[175] Without such national measures, a bilateral agreement would remain incomplete.
Finally, the reconstructed model contributes to the broader debate on the relationship between humanitarian obligations and state sovereignty at sea. The duty to rescue has historically been understood as an obligation that transcends the interests of individual states, grounded in the shared recognition of the vulnerability of human life at sea.[176] The securitisation of migration has placed this understanding under pressure in many regions.[177] By reconstructing bilateral SAR cooperation around a humanitarian firewall, a clear allocation of responsibility, and agreed protection protocols,

[172] Tanu, Missbach, and Lumenta, 'Introduction: Forced Migration and Protracted Transit'.
[173] Law of the Republic of Indonesia Number 29 of 2014 on Search and Rescue.
[174] Law of the Republic of Indonesia Number 18 of 2017 on the Protection of Indonesian Migrant Workers.
[175] Sodik, *Hukum Laut Internasional.*
[176] Papanicolopulu, 'The Historical Origins'.
[177] Ghezelbash and others, 'Securitization of Search and Rescue at Sea'; Moreno-Lax, Ghezelbash, and Klein, 'Between Life, Security and Rights'.

Indonesia and Malaysia could demonstrate that neighbouring states can manage irregular migration without compromising the protection of life. Such an approach would be consistent with the constitutional and international commitments of both states, and with the vision of regional cooperation expressed in the ASEAN SAR Declaration.[178][179]

## Conclusion

This study concludes that the obligation to rescue irregular labour migrants in distress on Indonesia–Malaysia maritime routes is firmly grounded in international and national law. The duty to render assistance under UNCLOS and SOLAS applies regardless of the nationality or status of persons in distress; the SAR Convention establishes a system of search and rescue regions and coordination centres and requires delivery of rescued persons to a place of safety; and Indonesian law, including the laws on search and rescue and on the protection of migrant workers, gives effect to these obligations. The framework is, however, incomplete with respect to the allocation of responsibility between neighbouring states in particular incidents, the obligation to accept disembarkation, and the relationship between rescue and enforcement. These gaps give rise to contested search and rescue regions, in which responsibility for rescue is uncertain, disputed, or avoided in practice because of boundary uncertainty, the movement of vessels across regions, and the consequences of disembarkation.

Existing cooperation between Indonesia and Malaysia suffers from six weaknesses: the absence of a dedicated bilateral SAR instrument, residual uncertainty arising from maritime boundaries, the dominance of security and anti-smuggling approaches, the absence of agreed disembarkation and post-rescue protection procedures, fragmented data and coordination, and limited accountability. To address these weaknesses, this study proposes a reconstructed model of bilateral SAR cooperation built on five pillars: a dedicated bilateral SAR agreement without prejudice to maritime boundaries; clear allocation of coordination responsibility with a default rule of action; a humanitarian firewall separating rescue from enforcement; agreed disembarkation and post-rescue protection protocols; and joint information and accountability mechanisms. Further research is recommended to examine the operational practice of the SAR authorities of both states empirically, including the handling of distress incidents involving irregular migrant vessels, once relevant data become available.

The significance of these findings extends beyond the bilateral relationship between Indonesia and Malaysia. Irregular labour migration by sea is a feature of many maritime borders in Southeast Asia and beyond, and the problems identified in this study, namely uncertainty over responsibility, the entanglement of rescue with enforcement, and the absence of agreed disembarkation procedures, are likely to arise wherever neighbouring states share a migration corridor at sea. The reconstructed model proposed here may therefore offer a template for other corridors, adapted to their particular geography and institutions. Above all, the study affirms that the protection of human life at sea must remain the paramount objective of SAR cooperation, irrespective of the legal status of the persons in distress.

### Ethics approval

This study is normative legal research based on documentary legal materials and did not involve human participants. *"Not required."*

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### Competing interests

[178] ASEAN Declaration on Cooperation in Search and Rescue of Persons and Vessels in Distress at Sea, Hanoi, 27 October 2010.

[179] Galani, 'Human Rights Obligations'.

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## Declaration of artificial intelligence use

*"This study used artificial intelligence (AI) tools and methodologies in the following capacities:*

1. **Manuscript writing support**: AI-based language models, such as Claude (Anthropic), were employed to:
    a. Language refinement (improving grammar, sentence structure, and readability of the manuscript).
    b. Content summarization (assisting in summarizing findings and conclusions in a concise manner).
    c. Technical writing assistance (providing suggestions for structuring complex technical descriptions more effectively).
    d. Generate scientific content, interpret data, and draw conclusions.

*"We confirm that all AI-assisted processes were critically reviewed by the authors to ensure the integrity and reliability of the results. The final decisions and interpretations presented in this article were solely made by the authors."*

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