

CHAPTER I

INTRODUCTION

A. The Reason of Title Selection

In late August 2001, Australia has experienced case that consumes international concern. It was started when the Norwegian freighter, MV Tampa, rescuing more than 400 immigrants, including woman and children, from a sinking boat wanted to enter the Australian waters. Due to the unconditional situation of the people inside the boat, the Captain of the ship, Arne Rinnan, was intent to land in Christmas Island.

Yet the Australian government rejected them and ordered the ship to remain outside of Australian territorial waters and changed course for Indonesia¹. The rejection from Australian government cause many pros and cons from international society. This case later was known as the Tampa Affair. The controversial of Tampa Affair then result a policy from Australian government, known as Pacific Solution.

As a part of international society, Australia has signed some agreements, conventions or protocols in international arena. One of them is the 1951 UNHCR Convention and the 1967 Protocol relating to the Status of Refugee. Under the convention, Australia has an obligation to take care of refugees and asylum seekers.

¹ Mary Crock et al., *Future Seekers II Refugees and Irregular Migration in Australia*, The Federation Press, Sydney, 2006, p.114

Like the Tampa Affair, the implementation of Pacific Solution also draws international concern. Pacific Solution was implemented under John Howard's administration. It was started in 2001 after Tampa Affair and officially ended in 2007 under Kevin Rudd's administration. Pacific Solution was considered contradict to the convention that has been signed by Australian government. Moreover, it has breached Australian obligation under the 1951 UNHCR Convention and the 1967 Protocol relating to the Status of Refugee.

Thus, the writer thinks that the issue of the contradictory between Pacific Solution and the 1951 UNHCR Convention and the 1967 Protocol relating to the Status of Refugee is appropriate to be considering as an undergraduate thesis under title: The Contradictory of Pacific Solution Toward The 1951 UNHCR Convention and 1967 Protocol Relating To The Status of Refugee (2001 – 2007).

B. Background

Australia was discovered by James Cook in 1770 and he claimed it as the Great Britain possession. Australia is located on the Oceania with total area 7,682,300 sq km². After got the independence on 1901, it became the Commonwealth of Australia with 6 states and 2 territories of administrative; there are Australian Capital Territory, Northern Territory, New South Wales, Queensland, South

² Australian Government, 'Our Country', *Australian Government website*, <<http://australia.gov.au/about-australia/our-country>>, accessed on April 2 2011

Australia, Tasmania, Victoria and Western Australia. Nowadays, Australia is one of the largest and developed countries in the world.

Australia as one of the countries who ratified UNHCR 1951 Convention relating to the Status of Refugees and the 1967 Protocol has become the migration destination country. As migrant country, overseas migration to Australia has played important role on Australian population growth. It can be seen from most Australians are immigrants who arrived in Australia from more than 200 countries. With the total number of people approximately 22 billion, around 5 billion people were born outside Australia. Among those speaking almost 400 languages, including indigenous languages, identifying with more than 270 ancestries and observing a wide variety of cultural and religious traditions³. It makes Australia become a diverse cultural country. Its society includes from a rich variety of cultural, ethnic, linguistic and religious backgrounds.

The history of immigration in Australia has begun around 50,000 years ago. It was started when the ancestors of Australian Aborigines arrived on the continent via the islands of the Malay Archipelago and New Guinea. The number of people migrated to Australia has increased rapidly time by time. It is caused by several factors like colony making from British and the discovery of gold in New South Wales and Victoria. Besides, some world events like World War II, conflict and dictatorship in some countries also led the victim of the events move to Australia.

³ Department of Foreign Affairs and Trade, 'Australia in Brief: A Diverse People', *Department of Foreign Affairs and Trade website*, June 2008, <<http://www.dfat.gov.au/aib/society.html>>, accessed on June 9 2010.

Since World War II Australia has been host to more than 500,000 refugees with the humanitarian program numbers never falling below 11,800 in any year between 1990 and 1995. It make Australia becomes the third highest recipient of refugees in the world⁴.

There are several reasons why Australia is regarded as one of the most migration destination country. Firstly, economic factors, the advanced of Australia economic makes the people around the world come to Australia to make their life better. With GDP per capita around US\$ 41,300⁵, people assume that Australia include in the developed countries that can guarantee the life of their people. Secondly is political factor, the political condition on their home country which is unsafe makes the people have to moved from their country and find another safe place. The participation in ratifying UNHCR 1951 Convention relating to the Status of Refugees and the 1967 Protocol also make people around the world who become displaced person from their home country choose Australia as the destination country.

Recent time, there are many conflict occur in several countries that cause the instability of economic, political and social condition on those country. That condition make the people that became the victim of the conflict leave their country and try to find another safe place. Australia as one country that provides protection for asylum seekers who meet the United Nations definition of a refugee, as defined in

⁴ Department of Immigration and Citizenship, 'Fact Sheet 2: Key Fact In Immigration', *Department of Immigration and Citizenship website*, <<http://www.immi.gov.au/media/fact-sheets/02key.htm#e>>, accessed on June 9 2010.

⁵ Central Intelligence Agency, 'Australia', *CIA World Factbook website*, March 10 2011, <<https://www.cia.gov/library/publications/the-world-factbook/geos/as.html>>, accessed on April 2 2011

the UNHCR 1951 Convention relating to the Status of Refugees and the 1967 Protocol became one of asylum seekers destination. So, that's why the number of boat people come to Australia has been increased in recent years. Richard Towle, UNHCR regional representative, argued that the border protection laws may not reduce the number of boat people. The uncondusive situation in some countries such as Iraq, Sri Lanka and Afghanistan led to the increasing number of people who seek asylum in Australia⁶.

The high number of immigrant to Australia becomes a serious issue on Australia. The high intensity of immigrant flows particularly it eventually become a very sensitive matter for Australia internally and externally.

Moreover, there is one of the immigrant issues in Australia that consumed the concern domestically and internationally. It was the Tampa Crisis happened in the late August 2001. This case started on August 26th 2001 when the Norwegian freighter, MV Tampa, rescuing more than 400 immigrants, including woman and children, from a sinking boat wanted to enter the Australian waters. Most of the immigrants are come from Afghanistan and Iraq. When the captain, Arne Rinnan, intent to bring the ship to Christmas Island, the Australian government refused their permission and ordered the ship to leave Australian waters and back to Indonesia. The immigrants denied the ordered and acted aggressively to keep their want to land

⁶ Peter Van Onselen, 'Rating the Rudd Solution: Australian Immigration under the Microscope', *Government: Business, Foreign Affairs and Trade website*, January 18 2010, <<http://www.governmentmedia.com.au/index.php/previous-issues/april/9-rating-the-rudd-solution-australian-immigration-under-the-microscope>>, accessed on June 9 2010.

in Australia. In other side, the government paid no regard to the immigrant and even the government threatened the ship that Australia will act by force if the freighter still entered the territory of Australia. Moreover the Prime Minister John Howard ordered the Tampa freighter be watched by Australian Special Forces. The action of Australian government at that time made a controversial both at home and in international society.

Tampa Crisis does not merely spark the impact to the international society, but it also effect the domestic issue. At that time, the harsh action of Howard made his popularity went down among Australia society. Yet, Howard used this case as the commodity of domestic political Australia to lift his vote gain. After got pressure from domestic and international, finally Howard issued a solution to handle the Tampa Crisis, known as Pacific Solution. Pacific Solution is a policy of transporting asylum seekers to detention camps on small island nations in the Pacific Ocean like Nauru and Manus, rather than allowing them to land on the Australian mainland. It consisted of three central strategies. Firstly, thousands of islands were excised from Australia's migration zone or Australian territory. Secondly, the Australian Defense Force commenced "Operation Relex" to interdict vessels containing asylum seekers. Finally, these asylum seekers were removed to third countries in order to determine their refugee status.⁷

⁷ Mary Crock et al., *Future Seekers II Refugees and Irregular Migration in Australia*, The Federation Press, Sydney, 2006, p.114

The Pacific Solution became the controversial policy. In Australia itself, there were some sides that opposed this policy. They argued that Pacific Solution is not a solution, yet it is also described as the cynical and unsuccessful policy. It can be seen from some points of this policy assessed broke Australian law either. For instance, arriving in Australia without documents, in a boat, uninvited, actually it is not illegal under Australian domestic law and this exact situation is provided for in section 36 of Australia's own Migration Act⁸. But on the Pacific Solution, that such people has been mandatorily to detain until they are granted a visa or removed. Australian public also assumed Pacific Solution as money wasting. They assumed that this policy has spent a lot of Australian budget. It is estimated that the Pacific solution has cost close to a billion dollars since its inception. The annual maintenance costs alone for Nauru and Manus are \$27 million. Further costs of processing asylum seekers on Nauru and Manus Island since 2001 to 31 May 2006 are approximately \$253.5 million⁹. These costs is not included the millions in aid we give to Nauru every year, nor the cost of building the detention centers.

In international arena, Pacific Solution also received criticism from a number of areas like from Amnesty International, refugee rights groups and other non-governmental organizations. They also deemed Pacific Solution has broken the

⁸ Jessie Taylor, 'The Newly Proposed Refugee Laws: A Renovation of John Howard's Pacific Solution', *The Justice Project website*, June 8 2006, <http://csusap.csu.edu.au/~pforman/this_week/jp_oppose_pac_solution.pdf>, accessed on September 10 2010

⁹ Australian Democrats, 'Pacific Solution', *Australian Democrats website*, August 24 2007, <http://www.democrats.org.au/docs/ActionPlans/Immigration_PacificSolution_2007.pdf>, accessed on September 10 2010

principal of the universality of human right. On the other sides, UNHCR as the institution for refugee protection, also had strong concern about the Pacific Solution and assessed it as unusual solution. They claimed that Australia was failing to meet its international obligations in the UNHCR 1951 Convention relating to the Status of Refugees and the 1967 Protocol. There are some of the strategies in Pacific Solution are considered contradictory to the UNHCR convention. For instance, the interdiction vessels containing asylum seekers at sea can be seen as the rejection at the frontier as well as refoulement and it has breached Australia's obligation under article 33 on 1951 UNHCR Convention¹⁰.

The action of Australian government throughout the Tampa Crisis and the implementation of Pacific Solution have showed the ambiguity of Australia as the signatory of United Nations 1951 Convention and/or 1967 Protocol relating to the Status of Refugees. Their action seems that Australia had broken the essential of the convention which they signed in.

C. Research Question

Based on the background of the problem explained above, a research question was made: *“Why did Australia issue the Pacific Solution that is contradictory to the principle of United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees?”*

¹⁰ Amnesty International Australia, ' ', *Parliament of Australia website*, 2007, <http://www.aph.gov.au/Senate/committee/maritime_incident_ctte/submissions/sub25.doc>, accessed on March 23 2010.

D. The Purpose of The Research

The purpose of this research is to identify the reasons of why Australian government issued the Pacific Solution which is contradictory to the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees.

E. Theoretical Framework

To understand and analyze the phenomena above, theory will be used in this undergraduate thesis. In this research, the writer will use one theory and the theory used was *Decision Making Theory*.

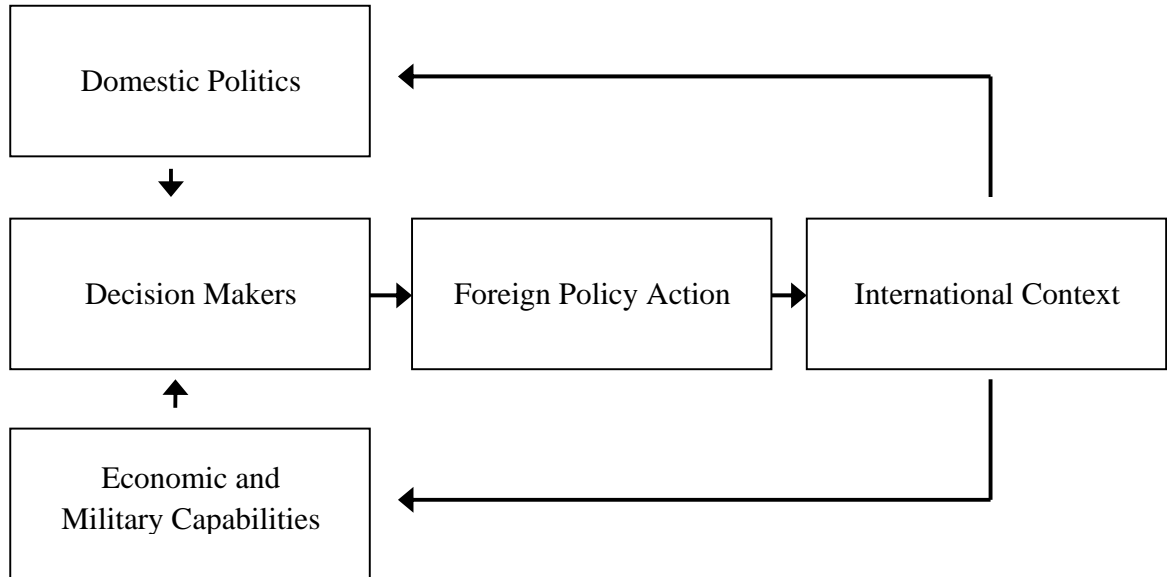
Decision making theory proposed by William D. Coplin is more concern on the decision making on foreign policy. There are several factors that influence the decision makers in determining their foreign policy action. They are domestic politics, economic and military capabilities, as well as international context¹¹.

International context is the product of other states foreign policy come from external determinant that will influence the domestic politics as well as economic and military of internal determinant of each state. Then those factors finally influence the decision makers in formulating the foreign policy. In addition, international politics is a behavior and commitment of a country toward certain international issues. Those factors can be shown as the figure below.

¹¹ W. D Coplin & C. W Kegley, *Multi Method Introduction to International Politics*, Markham Publishing Company, Chicago, 1971, p. 30

Figure 1.1

How the determinant factors influence the foreign policy action



Source: W. D Coplin & C. W Kegley, p. 30

F. Theory Application

In regard with the international context, it is important note that recently there are many conflict occur in some countries. This problem has lead to the huge number of victims who became refugees and asylum seekers. Since becoming a signatory of the UNHCR 1951 Convention relating to the Status of Refugees and the 1967 Protocol, it has indirectly led to a demonstration effect for citizens in areas prone to

conflict to seek asylum in Australia. It will cause the rapid flows of the refugees and asylum seekers to Australia.

Domestic politics in Australia has influence the issue of Pacific Solution. Like what has been explained, the Tampa affair has laid down the vote for Howard. Yet, in fact Howard use this case to lift up his popularity by emphasizing the rumors of sovereignty and security. After Howard get his popularity again, then he reelected became the Prime Minister.

. The decision making process in Australia is really reckon on the party that won the election. Under Howard administration, Liberal Party was the ruling party at that time when the Pacific Solution issued. Liberal Party's ideology is more concern on the individual freedom and free enterprise. They do not really concern on humanitarian problem. On immigrant issue, the Liberal Party pays more attention to skill migration program that can give profit for Australia than humanitarian program.

Related to the economy and military capabilities, refugees and asylum seekers problem is seen as the threat for Australia. The huge number of refugees and asylum seekers in Australia will influence the economic development in Australia. Between 1966 and 2000, both the number of people who were unemployed and Australia's unemployment rate have increased. Over this period, the number of unemployed

people in Australia increased from 90,300 to 596,000¹². The entrance of refugees and asylum seekers later on will increase more number of unemployment in Australia and it will be worst for the Australia economic condition.

In addition, the arrival of refugees and asylum seekers in Australia has increased the economic burden for Australian government. The Australian government should be responsible to fulfill the basic needs of the refugees and asylum seekers such as food, drink, temporary shelter, health facilities and education facilities, as listed in the UNHCR Convention. Those responsible will spend more budgets in high cost.

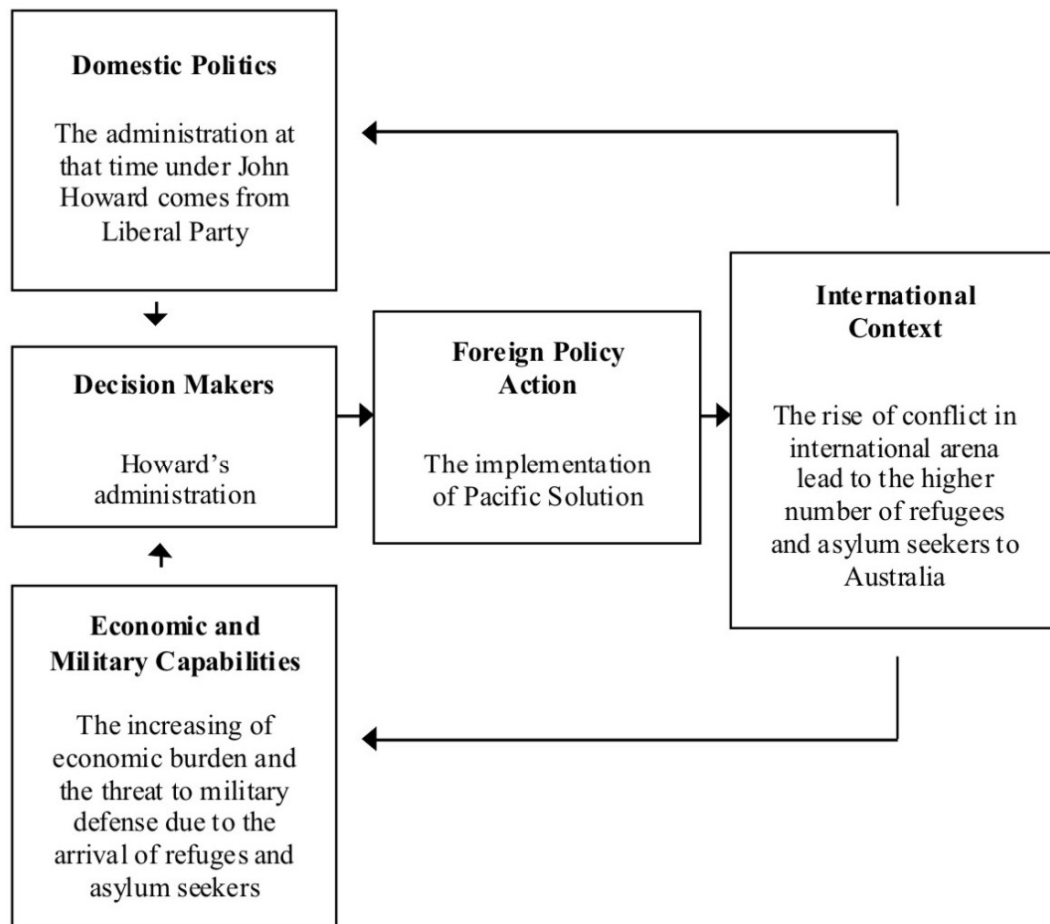
In military issue, the refugees and asylum seekers is reputed as threat for Australia defense. The spread of terrorism discourse has made Australia military became more aware toward the people entering their country. It also related to the sovereignty problem.

From those explanations, it is argued that international context influencing domestic pressures by any means provided the reasons of the implementation of the Pacific Solution which is contradictory to the UNHCR Convention and it can be describe by the figure below to explain the case.

¹² Australian Bureau Statistic, 'Underutilised Labour: Unemployment Trends and Pattern, 4102.0 – Australian Social Trends 2001', *Australian Bureau statistics website*, 6 June 2001, <<http://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/855e6f87080d2e1aca2570ec000c8e5f!OpenDocument>>, accessed on March 23 2011.

Figure 1.2

How the determinant factors influence the implementation of Australia Pacific Solution



G. Hypotheses

It is argued that there are several factors that made Australia government issued the Pacific Solution which is contradictory to UNHCR convention. First, in international context, the rise of conflict in international arena has lead to the large

number of victims who became refugees and asylum seekers and it will influence the flows of refugees and asylum seekers come to Australia. Second is domestic politics. The Australia domestic politics at that time that run under Howard administration from Liberal Party has made different view toward the refugees and asylum seekers. Third is about the economic and military capabilities. The will of Australian government to make their economic condition more conducive and to keep their sovereignty also became the motive of Australian government to implement the Pacific Solution.

H. Method of Research

Library research is the main method to write this paper. The writer will add the information by interview in the way of collecting data for explaining the problems as well as analyzing the hypothesis. All the information that support this research uses the secondary data, comes from books, Newspapers, Journals, Internet, and other literature resources.

I. Range of Research

Focusing more on the topic of research, the writer limits the time, when the research is conducted. The writer is going to value the Pacific Solution implemented

on 2001 until 2007. It is started when the Tampa Affair, the background of the Pacific Solution, happened in August 2001. Then continue to the contradictory of the Pacific Solution as long as its implementation until 2007 when the policy was officially ended.

J. System of Writing

The system of writing will be used by the writer as the important item of the scientific research. So that in the process of writing the thesis will not deny the structures and formal rules of scientific research's thesis.

In Chapter I, the writer will explain about the problem background, research question, purpose of research, theoretical framework, hypothesis, method of research, range of research, and system of writing.

In Chapter II, the writer will discuss about the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees. It also will describe about Australia's implementation of the ratification of this convention including Australia obligation as the signatory of the Convention.

In Chapter III, the writer will analyze why Australian government as one of the signatories in the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees implement the Pacific Solution that is opposed the principal of the Convention. In this chapter the writer will elaborate from theory

that has explained before and deeply correlated to the case. Besides, the writer also will describe the immigration problems faced by Australia.

In Chapter IV, the writer will describe about the implementation of Australia Pacific Solution. It also will explain the Humanitarian Program of Australia. Then, it also will explain how Pacific Solution contradicts to the UNHCR Convention.

In Chapter V, the writer will give the conclusion of all aspect that has been discussed in the previous chapter.