

CHAPTER I

INTRODUCTION

A. BACKGROUND

Over the past decade Australia's policies relating to the treatment of asylum seekers have progressively tightened most recently under the current Tony Abbott Government's 'Operation Sovereign Borders' mandate with its strong focus on 'border protection'. The result is a deep-seated attitude of dehumanization and alienation of asylum seekers who are portrayed as a threat to Australia. The most troubling is Australia's controversial policies to 'stop the boats', turning boats of asylum seekers away, particularly back to Indonesia which has become a hothouse stopping ground for people seeking asylum in Australia. Those that do successfully reach Australia are sent to third country processing detention centers in Manus Island, Nauru Island and Christmas Island, where individuals seeking refuge endure atrocious health and sanitation conditions in overcrowded and inadequate accommodation facilities.¹

More than 600 asylum seekers have returned home voluntarily or through forced repatriation. The figures, that until now had been kept secret, confirm that

¹Andrea Tang, David Hammond, 2014. *The Push Back Situation in Australia, a Case Study on Human Rights Abuses for Indonesia Migrants and Refugees Trying to Seek Refugee in Australia*. London, Human Right at Sea. P. 1-2. It also can be accessed on <http://9bri.com/the-push-back-situation-in-australia-operation-sovereign-borders-and-stop-the-boats/>

for the first time since 2008 the tide of boat arrivals has begun to turn, and the number of people returning home is now exceeding arrival numbers. Of those, 240 from mainland detention or community detention left voluntarily, having given up hope of being granted asylum, and 168 were flown home by the government. A total of 198 asylum seekers from Manus Island and Nauru had also asked authorities to be returned home after realizing they would not be settled in Australia.²

Australia is one of 145 countries to have ratified the 1951 Refugee Convention. This means that Australia has committed to respect the rights of refugees and to uphold the obligations set out in the treaty. Crucially, as a party to the Convention, Australia has agreed to never return a refugee to a country where he or she has reason to fear persecution. Australia has international obligations to protect the human rights of all asylum seekers and refugees who arrived in Australia, regardless of how or where they arrived and whether they arrived with or without a visa.³

While asylum seekers and refugees are in Australian territory (or otherwise engage Australia's jurisdiction), the Australian Government has obligations under various international treaties to ensure that their human rights

²<http://www.dailytelegraph.com.au/news/nsw/more-than-600-asylum-seekers-return-home-voluntarily/story-fni0cx12-1226868141009> accessed November 5, accessed on November 5th, 2014 at 8.30 pm.

³Clara Ignatia Tobing, 2014. *Penerapan Prinsip Non-refoulement dalam Kasus Relokasi Pencari Suaka Ilegal Australia Ke Pulau Manus dan Pulau Nauru*, Bandung, Universitas Padjajaran.

are respected and protected. These treaties include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC). These rights include the right not to be arbitrarily detained. As a party to the Refugee Convention, Australia has agreed to ensure that asylum seekers who meet the definition of a refugee are not sent back to a country where their life or freedom would be threatened. This is known as the principle of *non-refoulement*.⁴

“Everyone has the right to seek and to enjoy in other countries asylum from persecution” – Article 14, Universal Declaration of Human Rights.

The United Nation Office of the High Commissioner for Refugees (UNHCR) has recognized the institution of asylum from persecution, as enshrined in Article 14 of the Universal Declaration of Human Rights, to be among the most basic mechanisms for the protection of refugees⁵. Moreover, many of the other international obligations to which Australia is party to, such as the ICCPR, ICESCR and the CRC have been held by the International Court of Justice as being applicable to acts done by a State in the exercise of its jurisdiction even outside its own territory, if it has effective control over the situation.⁶

⁴ <https://www.humanrights.gov.au/publications/face-facts-2012/2012-face-facts-chapter-3>, accessed on October 24th, 2014 at 8.03 pm

⁵ <http://www.unhcr.org/3ae68c6e30.html>, accessed on October 24th, 2014 at 8.10 pm.

⁶ Andrea Tang, David Hammond, 2014. *Op. Cit.* p. 3

Yet in the fact, the policies and treatments are clearly breach Australia's international human rights obligations in some ways, most notably the principles of non-refoulement. It is important to highlight, however, that Australia is a part of number of international human rights treaties and the United Nations Convention relating to the Status of Refugees. At the very least, they subvert the humanitarian object and purpose of the Refugee Convention. Besides, they also infringe concrete legal obligations – such as the individual right to seek asylum, the right to be free from cruel, inhuman or degrading treatment, the right not to be arbitrarily detained, and the right to non-discrimination⁷

B. RESEARCH QUESTION

1. How does international law regulate the turning back boats and transfer of asylum seekers to the third country by Australia?
2. Does Australia breach the International Law regarding the issue of the turning back boats and transfer of asylum seekers to the third country?

C. RESEARCH OBJECTIVES

This research aimed to know both the turning back boats and the conduct of transfer of asylum seekers to the third country in Australia is acceptable or unacceptable based on the perspective of the International Law. Besides, the

⁷Jane Madam, 2013. Australia and Asylum Seekers, *International Journal of Refugee Law* Vol. 25 No. 3 London, Oxford University Press, p. 9. It can be also accessed on <http://ijrl.oxfordjournals.org/>

researcher wanted to learn more on the regulation of the International Law applicable to the issue of transfer of the asylum seekers to the third parties.

D. BENEFITS OF RESEARCH

This research provided benefits as follows:

1. Theoretically

This research gives benefits to know deeply and to increase the knowledge about the regulations in the International Law that would be applied to the issue of the turning back boats and the transfer of asylum seekers to the third country in Australia and to know the role of UNHCR as one of the international organization which is mandated to overcome the issue of refugee and asylum seekers.

2. Practically

This research develops the understanding on how international law regulates the issue of the turning back boats and the transfer of asylum seekers to the third country in Australia. This research also will share and enhance the knowledge regarding on the asylum seekers issue.

E. Chapters Overview

This research consists of five chapters: Chapter I explains introduction, Chapter II Literature Review is told, Chapter III Research Methods, Chapter IV is the Discussion, Chapter V reveals Conclusion and Suggestion.

Chapter I: Background

The researcher explained the background, the research problem, and the benefit of the research.

Chapter II: Literature Review

Chapter II described the definition, scope of asylum, asylum seekers and refugee, and international instruments relating to the issue of asylum seekers.

Chapter III: Research Method

Chapter III discussed about the research methods used in the research. This research method consists of type of research, research approach, data, technique of collecting data, analysis and the overview of the chapter. The type of this research is a legal research. The research approach used statute approach, where it was conducted by study. Also this research used material research taken from some literatures consist of primary legal material, secondary legal material, and tertiary legal material. Then, the methods of collecting data in this research was conducted through library research, and was analyzed systematically through evaluative and descriptive analysis. The last is about overview of the chapter.

Chapter IV: Analysis

Chapter IV displayed what is meant by the policy of the Tony Abbott's government "operation border policy" in which asylum seekers entering Australia territory will be expatriated or prominently known as 'turn back the boats' and transferred to the third country and its impact. The chapter analyzed the international law perspective on the issue. The research explained and discussed the status and protection of the asylum seekers in International law. This analysis aimed at give a clearly informations on such regulations relating to the issue.

Chapter V: Conclusion and Suggestion

Chapter V is a conclusion. The researcher made a summary of the research, and also review the analysis of the research that answered the problem of research, which was delivered in the first chapter of the research.