

## CHAPTER I

### INTRODUCTION

#### 1.1 Background

In 2010, some national secret documents of the United States were published to public. The documents were regarding to the Afghanistan war (the “Afghan War Diary”) such as several politically charged and embarrassing digital contents, airstrike’s gun sight footage in Baghdad, and the United States department diplomatic cables. Those document were published under Wiki-Leaks.org, the self-proclaimed non-for-profit online repository of anonymous leaks (Berghel, 2012).

The man behind of this action was Julian Assange. Assange’s role in WikiLeaks was editor-in-chief and co-founder of the WikiLeaks. His professional job in hacking and programming in the U.S brought Julian become senior hacker. In his career life, he successfully hijacked the U.S military and diplomatic documents. In 2006, he used WikiLeaks to publish the national secret documents that were stolen from the United States Government and other countries (Värk, 2012). Assange obtained the information from Bradley Manning, U.S Army private serving in Iraq. WikiLeaks did not only publish those secret documents, but also plenty of embarrassing documents regarding the U.S military actions (Berghel, 2012).

Besides that embarrassing documents, collateral murder video published by WikiLeaks showed that some of Reuters' war correspondents and children were victim of war. It embarrassed The United States Department of Defense and Military. It contained of 75,000 documents which mostly were classified as secret. Those documents encompassed speculative assessments, intelligence intercepts, internal military incident reports, and informants' reports which some of them referred to other informant's name, the failure operation reports, alarm of the United States and sympathetic foreign governments (Berghel, 2012).

The most embarrassing is Cablegate or the United States diplomatic cables leak. It contains approximately 250,000 diplomatic cables between the U.S States Department and nearly 300 embassies, consulates, and diplomatic missions around the world. Hal Berghel (2012) informed that, "Of these cables, about one-half were unclassified, one-third were labeled "confidential" and approximately 15,000 were labeled "secret" (Berghel, 2012). As far as now, the WikiLeaks has only published the small fraction of the cables. In other side, large portion of fraction was shared among major newspapers, such as *Der Spiegel*, *El Pais*, *Le Monde*, *The Guardian*, *The New York Times* (Berghel, 2012).

Considering to that facts, Assange became the most wanted by U.S Government. The U.S Vice President, Joe Biden, and others called Julian Assange to face his punishment towards his action. They recognized Julian Assange as terrorist and the country's betrayer. The nationality of Assange is Australian. Therefore, it

would be difficult for the U.S government to charge him with espionage. In other side, the Australian Prime Minister, Julia Gillard, responded negatively of his actions in hijacking some U.S government documents such as the Afghanistan War Log (2010) and Guantanamo files (2011). She argued that Assange's action was illegal and he did not violate Australian law (Kai, 2015).

On November 20, 2010, European Arrest Warrant arrested Assange to face extradition in Sweden for rape and sexual assault allegations (Kai, 2015). He was interrogated in Sweden regarding this issued for approximately three weeks. On December 8, 2010, he decided to turn himself to face judicial process in English Court, London for eighteen months. As conclusion, Sweden asked for extradition request towards Assange to the United Kingdom Supreme Court. United Kingdom officials accepted the Sweden request and gave ten days to take Assange to Sweden (Lavander, 2014). Assange was terrified by the risks that he would face in his travel to Sweden since it might lead him to face the U.S. in charges relating to WikiLeaks, and to receive death penalty as the consequence of his crime (Rees, 2014).

Assange decided to pursue a diplomatic asylum from embassy of Ecuador in June 19, 2012. After he failed to get refuge from European Court of Human Rights (ECHR), he was not recognized as person who had right to guaranteed asylum (Lavander, 2014). Based on Article 1 (F) (b) on The Convention relating to the Status of Refugees (1951) that was signed by the United Kingdom and Ecuador, it mentioned that, "The provisions of this Convention shall not apply to any person with respect to

whom there are serious reasons for considering that.... He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee”. Assange’s allegations in Sweden were sexual assault allegations and rape which were considered as serious nonpolitical crime (Casciani, 2012). Ecuador granted Assange’s diplomatic asylum in August 16, 2012 (Kai, 2015). In his life as an asylum seeker, the government of Ecuador facilitated him with bed, telephone, sun lamp, computer, shower, treadmill, and kitchenette in the studio room (Casciani, 2012).

The United Kingdom and Swedish authorities did not accept Ecuadorian decision to grant asylum to Assange. In the official statement of The Swedish government, it responded that Ecuador prevented “the Swedish judicial process and European judicial cooperation from taking its course” (Värk, 2012). The United Kingdom and Sweden criticized the Ecuadorian decision. Both countries argued that Assange guaranteed asylum was not in the Ecuadorian formal territory therefore it was invalid (Lavander, 2014).

The Ecuadorian Minister for Foreign Affairs announced that Ecuador received a diplomatic letter from the United Kingdom in August 15, 2012. The letter said:

“You need to be aware that there is a legal base in the UK, the Diplomatic and Consular Premises Act 1987, that would allow us to take actions in order to arrest Mr. Assange in the current premises of the Embassy.”

“We sincerely hope that we do not reach that point, but if you are not capable of resolving this matter of Mr. Assange's presence in your premises, this is an open option for us.” (Telegraph, 2012)

From this letter, it showed the United Kingdom's disagreement towards the Ecuadorian decision. That letter pointed to the Diplomatic and Consular Premises Act 1987 section 1 (3) that the United Kingdom had the capability to remove the inviolability of Ecuadorian diplomatic premises in which the building and land of Ecuador embassy were located (Akande, 2012).

In August 16, 2012, The Foreign Secretary of United Kingdom, William Hague stated that the United Kingdom was disappointed towards Foreign Minister of Ecuador regarding to the issue of Julian Assange who was guaranteed under diplomatic asylum of Ecuador. He explained that

“Under our law, with Mr Assange having exhausted all options of appeal, the British authorities are under a binding obligation to extradite him to Sweden. We must carry out that obligation and of course we fully intend to do so. The Ecuadorian Government's decision this afternoon does not change that in any way. Nor does it change the current circumstances in any way. We remain committed to a diplomatic solution that allows us to carry out our obligations as a nation under the Extradition Act”. (Foreign and Commonwealth Office, 2012)

He also reminded Ecuador to respect the national law of the United Kingdom and to follow its rule (Foreign and Commonwealth Office, 2012).

Based on that explanation, the decision of Ecuador contradicted to the position of United Kingdom due to Ecuador government decision which interfered the United Kingdom law process towards Julian Assange in the case of raping and sexual assault allegations. It was the United Kingdom obligation to extradite Assange to Sweden. Ecuador must respect and follow the local law in the United Kingdom. In the other

words, Ecuadorian decision by guaranteeing diplomatic asylum harmed the position of United Kingdom. Based on the description, this research would emphasize in looking for the United Kingdom's position in this issue and other factors that supported the position of the United Kingdom.

## **1.2 Research Question**

Based on the background, this thesis shall be directed to answer the following question:

Why was the United Kingdom unable to interdict Ecuadorian decision to guarantee diplomatic asylum to Julian Assange?

## **1.3 Research purpose**

This research aims to:

1. Explain the factors causing the United Kingdom which was unable to interdict Ecuadorian decision to guarantee diplomatic asylum to Julian Assange.
2. Find out the reasons behind the United Kingdom's action.

## **1.4 Theoretical Framework**

To understand the issue and to answer the research question, the theoretical framework is necessary. In order to help in analyzing the issue and in finding the answer of the research question. The theoretical framework consists of theories and concepts that are used as tools to analyze the issue. This paper uses International regime theory from Donald J. Puchala and Raymond F Hopkins, and Constructivism theory

from Martha Finnemore and Kathryn Sikkink. International regime is one of theories that is used in International Relations to help the understanding on the behavior of state. The behavior of state can be influenced by the regime that exists in that time. Regimes produce rules and procedures that must be followed by the participants. Meanwhile, the constructivism theory explained how the norms influence towards the behavior of the state.

Krasner (1982) explains that, “Regime can be defined as set of implicit or explicit principles, norms, rules and decision-making procedures around which actor’s expectations converge in given area of international relations”. Principles are beliefs of fact, causation and rectitude. Norms are used as standard of behavior of actors in defining terms of rights and obligation. Specific prescription or proscriptions for action are known as rules. Decision making procedures are prevailing practices for making and implementing collective choice. Hopkins and Puchala (1982) recognized that regimes as pervasive characteristic of international system. It means that behavior cannot sustain in the pattern for any length of time without producing a congruent regime. Behaviors and regimes are linked to each other, they are inseparable. In the other side, regimes and agreements are different (Krasner, 1982).

Regimes must be recognized as more than temporary arrangements that change in every shift of power or interest. Agreements are often one-shot arrangement. Agreement is facilitated by regimes because of its purpose. Robert Jervis (1982) argues that the concept of regimes does not only imply norms and expectations that facilitate cooperation. However, a form of cooperation is more to the following of short run self-

interest. Regime-governed behavior cannot be based on short term calculations of interest. It should embrace the principles and norms since it must follow general obligation that are accepted among actors. Because of that, the crucial distinction must be made between principles and norms and rules and procedures. The basic defining characteristics of a regime are provided by norms and principles. The regimes will change if the rules and decision making procedures are changed (Krasner, 1982).

Hopkins and Puchala (1982) explain five particular features of the phenomenon of regimes in their journal, "International Regimes: Lessons from Inductive Analysis". First, they argue that regime is an attitudinal phenomenon. It means behavior is a result from faithfulness to principles, norms and rules, which are sometimes in from legal codes. In the other side, regimes are subjective. They argue that, "The existence of regimes are mostly as expectations or convictions about legitimate, participants' understandings, appropriate or moral behavior". The regimes may exist in relations to system that independently establish based on geographic concern and some of them may exist in relation to a mixture of geographical and functional concerns (Puchala & Hopkins, 1982).

Second, an international regime contains doctrines regarding to producers for making decisions. Hopkins and Puchala (1982) emphasize that to identify regime, the major substantive norm and broad norms should be analyzed. They claim that the broad norm is also important for analysis. Broad norms produce the procedures of regime. The rules and principles of regime are formed by the procedures. Based on that explanation, the broad norm can be analyzed as the detailed additions. They note that



to identify regime, there are four points that should be analyzed. Those points are the norms that exists in the regime, the parties who participate in regime, the interests or priority that dominate in the regime, and rules that establish to protect and keep the dominance in the decision making (Puchala & Hopkins, 1982).

Third, to describe the regime, they suggest to categorize the major principles and norms that advocate actor's behavior and exclude unusual behavior. It is especially useful to evaluate the hierarchies among principles and the prospects for norm enforcement (Puchala & Hopkins, 1982).

Fourth, regimes consist of asset of elites who act as practical actors in it. The prime official members of most international regimes are governments of national-states, however, transnational and, subnational organizations may participate and practice in international regimes. Often, most of bureaucratic unit or individual who participate in regime operates as part of the "government" of international subsystem by creating, enforcing or otherwise acting in compliance norms. In international networks of activities and communication, individuals, and bureaucratic roles are linked. Regimes are created by individuals and rules govern issue-areas (Puchala & Hopkins, 1982).

Finally, in every substantive issue-area in international relations, regime exists where there is detectably patterned behavior. Regulation is understandable as the outcome of regime and behavior of actors. The behavior consists of principles, norms or rules that must be exist. The pattern of behavior may reflect the dominance of

powerful actor rather than the voluntary consensus among all participants (Puchala & Hopkins, 1982).

To examine international regimes, Hopkins and Puchala (1982) offer four characteristics of theoretical importance. First, specific versus diffuse regime. Before examination, the system should be analytically limited since regime must be intellectually mapped based on the activities and participants. Regimes can be classified from function along a continuum ranging from specific issue, single issue to diffuse, and multi issue. Regimes may also be defined based on the number of actors who follow principles or at least norms. Universal adherence cannot be commanded by international regimes, even though there are many approach addressing that issue. The specific regimes more often tend to entrenched in boarder, the principles and norms from diffuse ones are taken or even given in more specific regimes. In this sense, it can be called as normative superstructures<sup>1</sup>, which are reflected in functionally or geographically specific normative substructures or regimes (Puchala & Hopkins, 1982, pp. 248-249).

Second, formal versus informal regimes. International organizations legislate some regimes by maintaining councils, congresses or other bodies and are supervised by international bureaucracies categorized as formal regimes. In the other hand, informal regimes are created and maintained by general agreements based on the

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<sup>1</sup> According to Beckett, the normative superstructure is the “constitution” of international law or international constitutional law. Since the normative superstructure’ function is governs the formation and operation of international law. Beckett prefer to avoid using constitution in describe the phenomenon by using term “normative superstructure”. (Cited on Yutaka Arai, “The Law of Occupation: Continuity and Change of International Humanitarian”.)

objectives among participants, compulsory by mutual self-interests, bounded on agreements and monitored by mutual surveillance (Puchala & Hopkins, 1982, p. 249).

Third, evolutionary versus revolutionary change. Evolutionary regimes can be changed substantively or qualitatively. The substantive change may happen in at least two different ways: changing principles by preserving norms or inverting norms in order to change principles. Qualitative change happens because of the participants change their minds about the interests and aims. It usually happens when the changes of information are available to elites or new knowledge otherwise accomplished. It is called evolutionary change because it happens in the procedural norms of regime of which usually the distribution of power among participants majority does not change. The changes give no effect to power structures and rules of regimes itself. However, the revolution change affects the power structures and rules of game since the dominant participants have highly political power to change the regimes based on their interests. The changes of regimes can bring disadvantages towards some participants. They must accept regime principles and norms and receive punishment if they do not accept regime. It usually happens in diffused regimes in which the powerful participants have dominant role in the regime (Puchala & Hopkins, 1982, pp. 249-250).

Last, distributive bias. Hopkins and Puchala (1982) argue that, “*all regimes are biased*”. People establish regimes under hierarchies. The establishment of regimes is mostly in the favor of the interest of the strong and is the result of international governance. However, the degree of bias makes considerable difference in regime’s

durability, effectiveness, and mode of transformation (Puchala & Hopkins, 1982, p. 250).

In addition, the constructivism theory emphasized that, “The international structure is determined by international distribution of ideas” (Finnemore & Sikkink, 1998, p. 894). It means the proper behavior constructed the world structure, order and stability. In this case, the proper behavior resulted from the collective idea, expectation and beliefs. The constructivism argued that the developing idea of norms and ideas constructed the international structure since the norms and ideas could be understood as tool of balancing power. Finnemore and Sikkink (1998) explained the norms as behavior standardization since the norms consist of things that states should be follow or decline. In other ways, the norms depends on the moral behavior of actors. The good actors will make decision based on the norms since the actor carried out the moral assessment in decision-making process (Finnemore & Sikkink, 1998, pp. 891-892).

Finnemore and Sikkink (1998) explained the life-cycle of the norms and the condition of the norms in their journal, “International Norm Dynamics and Political Change”. In the life-cycle of the norms, Finnemore and Sikkink explained three stages. The first stage is “the norm emergence”, they explained that the norms is established by actors who have interests in applying the proper behavior in their community. The actors known as Norm entrepreneurs, the norm entrepreneurs introduced the issues to public. The norm entrepreneurs carried out the political strategies in the framework of norm to influence the public. In order to promote the norms at international level, they

need to conduct organization platform such non-governmental organizations (NGOs) or larger transnational advocacy networks that NGOs followed (Finnemore & Sikkink, 1998, pp. 895-899).

In other sides, there are the international organizations have aims to promoting their own norms such as World Bank and United Nations. In this stage, the norm entrepreneurs and organizations tried to secure their position. For example, The World Bank and United Nations would like to gain support from the weak or developing states. In additional, NGOs and intergovernmental organizations asked support from the powerful states. The norm entrepreneurs and organizations used empathy and moral beliefs as motive. After this stage, it reached to “tipping or threshold points”. The tipping or threshold points happened when “one-third of the total states in the system adopt the norm”. The role of “critical state” as norm enforcement helps the developing of the norm in the system (Finnemore & Sikkink, 1998, pp. 899-901).

The second stage is “norm cascades”, the “norm cascade” happened that the number or participants of the norm increase. Many states applied and follow the norm without the domestic factors influence. In this point, the international democracy successfully influence the majority of states in international world. In the phenomenon of international politics, the states uses the diplomatic ways to gain support and uses material sanction as the tool of norm enforcement. In the second stage, the norm entrepreneurs and international organizations legitimate the norm by conducting agreements or conventions. In this stage, the norm became the part of policies and laws

in international standard. Legitimation is needed interdict the disapproval behavior. The states that have disapproval behavior would be categorize as “rogue state” in international politics, the states would loss of the trust, credibility and reputation towards other states. However, some leaders followed the norm based on their own value or even the psychological. The third stage is “internalization”, the norm accepted and it internalized by the actors and it performs automatically. In this stage, the norm is not be questioned and accepted totally in international politics (Finnemore & Sikkinik, 1998, pp. 902-905).

Finnemore and Sikkinik (1998) explained that the norm could be applied or accepted in several conditions. First condition is “legitimation”, the norm accepted or applied as legal instrument by majority actors in international politics. The second condition is “prominence”. Prominence means that several domestic norms have potentially applied as legal norms international politics. The last condition is “intrinsic characteristics of the norm”. There are several arguments about the “intrinsic characteristics of the norm”. The actors argue whether focusing on “the formulation of the norm” or “the substance of the norm and the issues it address (its content)” (Finnemore & Sikkinik, 1998, pp. 906-907).

In this discussion, international law was implemented as international regime since international law provides principles, norms, rules and decision-making procedures. International law was established by the states in order to manage relations among the states. International law provides some instruments from the past and recent

conventions that establish among the states. International law implements the past and recent conventions as norms, principles, rules or even decision-making procedures in maintain relations among the states.

In the case of diplomatic relations, international law used the Vienna Convention on Diplomatic Relations (1961) as one of the instruments (Leonavičiūtė, 2012). International law implemented Vienna Convention on Diplomatic Relations (1961) as norm in the case of diplomatic relations since Vienna Convention on Diplomatic Relations (1961) provided immunities and privileges of states in conducting diplomatic relations. The immunities and privileges from Vienna Convention on Diplomatic Relations (1961) were recognized as rights and obligations of states in conducting diplomatic relations. In conducting diplomatic relations, the behavior of states reflected from the Vienna Convention on Diplomatic Relations (1961) since Vienna Convention on Diplomatic Relations (1961) managed the term of rights and obligations of the states.

### **1.5 Hypothesis**

Theory of International Regime by Donald J. Puchala and Raymond F. Hopkins, and Constructivism theory from Martha Finnemore and Kathryn Sikkink lead to these following hypothesis:

1. The humanitarian principle in international law preclude the United Kingdom to interdict Ecuadorian decision.

2. The United Kingdom faithfulness towards Vienna Convention on Diplomatic Relations (1961) preclude them to interdict Ecuadorian decision to guarantee diplomatic asylum to Julian Assange.

### **1.6 Research method**

This research provided qualitative data. The data collection method used was library research since the data were collected from the literature. This research was supported by two kinds of sources. First was the official statements that were released by the United Kingdom government regarding this topic. Second was the information which was collected from international journals, articles, newspapers, books, social media, official web sites and other media as main resource regarding this issue.

The analysis method applied for this research was deductive analysis. The deductive analysis was a strategic research analysis by using the existence theory as tool of analysis. The existence theory was needed to help analyzing the issue. In the other words, the deductive analysis was used to prove the hypothesis by the existence theory. The existence theory also helped to understand the issue deeper.

### **1.7 The Scope of Research**

This issue was started in 2012 when Ecuador decided to guarantee a diplomatic asylum towards Julian Assange. Therefore, the scope of research focused on the issue happened in 2012 specially one that was related to the diplomatic asylum of Julian Assange.



## **1.8 Organization of writing**

There are four chapters in this paper. The first chapter is outline of this paper. It contains the background, research question, research purpose, theoretical framework, hypothesis, research method, the scope of research, and organization of writing. The second chapter explains WikiLeaks and the role of Assange in WikiLeaks. The third chapter explains diplomatic asylum and its practice in international law. The fourth chapter analyzes the case by using theoretical framework. The last chapter is the conclusion of this paper.

### **A. Introduction**

First chapter consists of the illustration the background of the problem of this issue. The issue was started when Ecuador decided to guarantee diplomatic asylum of Julian Assange and the United Kingdom disagreed towards that decision. Even though the United Kingdom had the rights to execute their law towards Julian Assange, they could not interdict Ecuadorian decision to guarantee diplomatic asylum to Julian Assange. That question becomes research question of this thesis.

The aim of this research is to find factors and reasons behind the United Kingdom's decision. In order to help the analysis, this thesis uses International Regime as the fundamental theory because the phenomenon of diplomatic asylum is classified as the influence of norms and principles to rules and procedures that exist in International law. Nowadays, human rights and humanitarian concepts are used as the

principles and norms of International law. In the other side, nature behavior of states are reflected from the faithfulness towards the laws that exist in international, and the laws could be from past and present conventions.

This research uses deductive analysis and library research as the research method since this research uses theories to help the analysis of the issue. The data is collected from literature such as books, international journals, newspapers and many else. The time range of analysis is limited to the year of 2012 when the issue started.

### **B. WikiLeaks and Julian Assange**

This chapter explores WikiLeaks phenomenon in international world and questions the role of WikiLeaks as non-mainstream mass media and its influence in international. Moreover, it discusses the man behinds WikiLeaks and his role in maintaining WikiLeaks.

### **C. Diplomatic asylum and its practice**

This chapter examines the practice of diplomatic asylum in international world. It also contains the brief historical description and explanation of diplomatic asylum to help the understanding of the practice of diplomatic asylum. This chapter also provides the practice of diplomatic asylum in Latin America.

## **D. Analysis**

This chapter provides the analysis of the issue regarding to The United Kingdom's decision towards diplomatic asylum of Julian Assange by using International Regime theory of Donald J. Puchala and Raymond F. Hopkins (1982), and Constructivism theory from Martha Finnemore and Kathryn Sikkink. International Regime theory helps the analysis of the factors and reasons of the United Kingdom's action. The factors and reasons of the United Kingdom's action is the result of rules and procedures that exist in international law since international law is conducted from norms and principles that the participants accept and use as legal basis. And Constructivism theory explained the power of norm influence the behavior of the state.

In their theory, Hopkins and Puchala (1982) argue that the regimes should be identified from their features and characteristics. By understanding the features and characteristics of the regime, it helps the analysis of the phenomenon of regime. The features and characteristics of regime explains the states' behavior towards regime itself. Meanwhile, Finnemore and Sikkink explained that the cycle-life of the norm and the condition of the norm that applied in international politics.

In this case, International law was implemented as international regime since it provided norms, principles, rules and decision-making procedures. In the exercise of international law, international law used some of instruments from the past and recent conventions that were established among the states. In case of diplomatic relations,

international law implemented Vienna Convention on Diplomatic Relations (1961) as norm since the behavior of states reflected from Vienna Convention on Diplomatic Relations (1961). Vienna Convention on Diplomatic Relations (1961) managed the practice of diplomatic relations by providing immunities and privileges. The immunities and privileges from Vienna Convention on Diplomatic Relations (1961) recognized as rights and obligations of states in conducting diplomatic relations. In the other words, Vienna Convention on Diplomatic Relations (1961) helped the behavior analysis process of the states since the states used Vienna Convention on Diplomatic Relations (1961) as norm.

#### **E. Conclusion**

The last chapter provides conclusion of all discussions in the previous chapters.