

La aplicación de la política de «vuelta a los barcos» en Europa: una lección de Australia

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Resumen:

Australia es uno de los países de destino de inmigrantes y solicitantes de asilo. Teniendo en cuenta el aumento en el número de inmigrantes, el gobierno australiano implementa la política «Operación Fronteras Soberanas». El gobierno australiano afirma que la política es exitosa y sugiere a Europa que ha estado enfrentando la crisis de refugiados desde 2015 implementar una política similar. Mirando hacia atrás a la implementación de esta política por parte del gobierno australiano, que también se conoce como política de «vuelta a los barcos», hay muchas violaciones de los derechos de los solicitantes de asilo. Esta situación no es diferente de Europa cuando intenta implementar la misma política. De hecho, la cooperación y el compromiso de todas las partes relacionadas son necesarios en el manejo de los inmigrantes.

Palabras clave:

Operación Fronteras Soberanas, política de vuelta a los barcos, balseros, refugiado, crisis de refugiados en Europa.

Applying «turn back boats» policy in Europe: a lesson from Australia

Abstract:

Australia is one of the destination countries of immigrants and asylum seekers. Taking into account the increasing number of immigrants, the Australian government implements «Operation Sovereign Borders» policy. The Australian government claims that the policy is successful and suggests to Europe that has been facing the refugee crisis since 2015 to apply similar policy. Looking back to the implementation of this policy by the Australian government, which is also known as «turn back boats» policy, there are many violations of the rights of asylum seekers. This situation is not different from Europe when it tries to implement the same policy. In fact, the cooperation and commitment of all related parties are necessary for the handling of immigrants.

Keywords:

Operation Sovereign Borders, «turn back boats» policy, boat people, refugee, Europe's refugee crisis.

1. INTRODUCTION: THE IMPLEMENTATION OF «TURN BACK BOATS» POLICY IN AUSTRALIA AND THE REFUGEE CRISIS IN EUROPE

Australia has been implementing «turn back boats» policy since September 18, 2013¹. Turning back boats is a policy of repelling boats that bring Irregular Maritime Arrivals (IMAs) entering Australian territorial waters. Its implementation is done by Australian Navy through «Operation Sovereign Borders» (OSB). This policy is implemented following the increased number of 'Irregular Maritime Arrivals' (IMA's) or commonly called as «boat people» to this country².

Australian government claims that this policy successfully reduces IMAs rate by 80% in the first four months of its implementation³. Moreover, the Australian government assumes this significant decrease is evidence of the success of the «turn back boats» policy. Based on this, Tony Abbott the Australian Prime Minister at that time suggested the leaders of European countries implement similar policy following the refugee crisis in Europe since 2015.

Related to the refugee crisis (also commonly called migrant crisis), the large number of migrants entering European countries through the Mediterranean Sea has prompted the government in the region to look for the

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¹ *Operation Sovereign Borders-The first six months*, <http://www.abc.net.au/news/2014-03-26/operation-sovereign-borders-the-first-6-months/5734458>, accessed June 7, 2015.

² PHILLIPS, J. and SPINKS, H., «Boat arrivals in Australia since 1976", *Parliament of Australia, Department of Parliamentary Services, Parliamentary Library*, (2013), p. 4

³ DOYLE, J., «Immigration Minister Scott Morrison suggests Operation Sovereign Borders has reduced asylum seeker arrivals in Indonesia», <http://www.abc.net.au/news/2014-01-15/morrison-says-asylum-se-eker-boat-arrivals-dropping/5201116>, accessed June 7, 2015.

solution. Through resolution on April 28, 2015, the European Parliament agreed to jointly address the refugee crisis in the region. European Union (EU) countries agreed to share the responsibility of the allocation of refugees in Italy and Greece to other member countries⁴. However, this agreement did not go as planned until finally Italy proposed a change of EU asylum procedures by blocking ship that brings migrants heading to Italy⁵.

Starting from this point, I try to elaborate and answer the question: can the similar policy in Australia be implemented in Europe too? To answer this, it is important to review how the Australian government implements its policy and the situation faced by IMAs to Australia since the implementation of this policy. It is commonly known that the situation between Australia and Europe are different. Moreover, this article examined how the situation faced by migrants after the implementation turns away boat policy in Europe. Based on data and research that has been done, this policy actually is not appropriate to be adopted by European countries. The attempt to resolve immigrant and refugee issues cannot be done partially, it takes consensus and commitment from all related parties to cope together.

2. THE CHANGES OF AUSTRALIAN GOVERNMENT POLICY ON ASYLUM SEEKERS

Some of the existing researches have examined various policies implemented by the Australian government towards 'boat people' who wanted to apply for status as refugees in Australia. The Australian policy on this subject has been changed for a couple of times. On «*The Evolution of the Temporary Protection Visa Regime in Australia*», Fethi Mansouri and Michael Leach described changes in Australian government policies to obtain the visa for the asylum seekers.

In 2001, the policy of granting visas to asylum seekers offshore was under the provision of *Pacific Solution*⁶. Moreover, the asylum seekers who come without a visa are considered do not meet the requirements unless they get ministerial discretion⁷. This policy makes boat people difficult to apply for asylum due to most of them reaching Australia without a valid visa. Furthermore, the Howard government also amends the migration act in 2004 in which to apply as a refugee must already be in Australia⁸.

It is undeniable that the arrival of these immigrants involves the people smugglers. Commonly known that these

people smugglers make the journey of the asylum seekers as a business and take advantage of them by providing vessel. The Australian Government has set various regulations on asylum seekers. In addition, the Australian government also sets various requirements and criteria to meet the status of refugees⁹.

'Pacific Solution' policy during the administration of Prime Minister John Howard in 2001 was reapplied by Tony Abbott in 2013 through OSB. The main difference in this policy is during Howard administration the placement of asylum seeker in the detention center in Nauru and PNG only for short-term whilst waiting for processing of the claim, while in the Abbott period it is a long-term settlement. Moreover, there is an uncertainty of waiting time to get a settlement after their status as refugees granted by UNHCR.

To answer the question whether this similar policy in Australia can be implemented in Europe too, firstly, it is important to review how the Australian government implements its policy. Afterwards, examining the effectiveness of this policy and what problems arise as the consequence, also how the situation faced by IMAs heading to Australia since the implementation of this policy. This far, there hasn't been any specific research discusses how the impact after the implementation of 'turn back boats' policy is enacted and what if the same policy is applied in Europe. Therefore, the purpose of this article is to examine the impact of Australian policy on blocking immigrant vessels after this policy implemented in 2013. This research is expected to answer the question of whether this policy can be applied in Europe especially on the route Mediterranean Sea.

3. RESEARCH METHODS

This research is conducted qualitatively through data collection procedures. Furthermore, research is done by collecting and analyzing various information from the journals, books, mass media news articles (from reliable mass media), as well as the source of the relevant Department of the Indonesia-Australia, United Nations High Commissioner for Refugees (UNHCR) and various associations and Non-governmental organizations (NGOs).

The scope of the research will be limited by taking a sample of data from 2013 since the policy «turn back boats» reapply by Australian government up to the current time of the research. The study will be descriptive by observing

⁴ Council Decision (EU), Interinstitutional File: 2015/0209 (NLE), Subject: COUNCIL DECISION establishing provisional measures in the area of international protection for the benefit of Italy and Greece, p. 3.

⁵ *Italy considers closing its ports to boats carrying migrants*, <https://www.theguardian.com/world/2017/jun/28/italy-considers-closing-its-ports-to-ships-from-libya>, accessed June 6, 2017.

⁶ MANSOURI, F. and LEACH, M., «The Evolution of the Temporary Protection Visa Regime in Australia», *International Migration*, vol. 47 (2) (2009), p. 107.

⁷ *Ibid.*, p. 108.

⁸ *Ibid.*, p. 112.

⁹ STEVENS, C. A., «Asylum Seeking in Australia», *IMR*, vol. 36, n° 3 (2002), p. 865.

how the Australian navy push boat of refugees. Also, collect samples and data on how many immigrants are being pushed back and what further actions will be taken by the Australian government. The research will be conducted by collecting information about the Australian government policies throughout the range of the research. This article also analyzes about the implementation of Australian government policies and then how these will be affected to immigrant especially IMA's.

4. IMA'S IN AUSTRALIA

Australia is one of the destination countries of immigrants who come by sea and generally claim as asylum seekers. When compared with the number of asylum seekers who enter the countries of the European region the number is much smaller. Around the world most asylum claims are lodged in Europe, the USA and Canada—in fact, more asylum claims are lodged in Europe (particularly in France, Germany, and the UK) than in any other part of the world¹⁰. However, the increasing number of immigrants each year has become one of the most important issues in the Australian government.

IMA's early history in Australia began in 1976 with the arrival of Vietnamese boat people. The arrival of these

asylum seekers is marked by the entry of asylum seekers from the aftermath of Vietnam War¹¹. The number of refugee arrivals by sea is increasing when the fall of Saigon. In this regard, the Australian government also increased the number of acceptance of asylum seekers. Until 1982, the Australian government realized the acceptance for permanent resettlement about 60,000 refugees¹².

In general, refugees from Afghanistan, Sri Lanka, and the Middle East are dominating number IMA's in Australia. While based on an annual publication of Department of Immigration and Border Protection on 2012-2013, the top five countries of origin the IMAs that submit the application to get refugee status determination are Sri Lanka, Iran, Afghanistan, Pakistan, and Iraq. Meanwhile, as the countries located close to Australia, Indonesia and Malaysia became the most traveled routes and transit points for refugees since the Vietnam war. The following is a graph of the number of IMAs that have entered Australia since 1976.

5. FROM THE 'ENHANCED SCREENING PROCESS' TO 'TURN BACK BOATS' POLICY

Along with the wave of migrant arrivals especially through the sea into Australia, the government made various policies. Some of the policies such as tightening surveillance

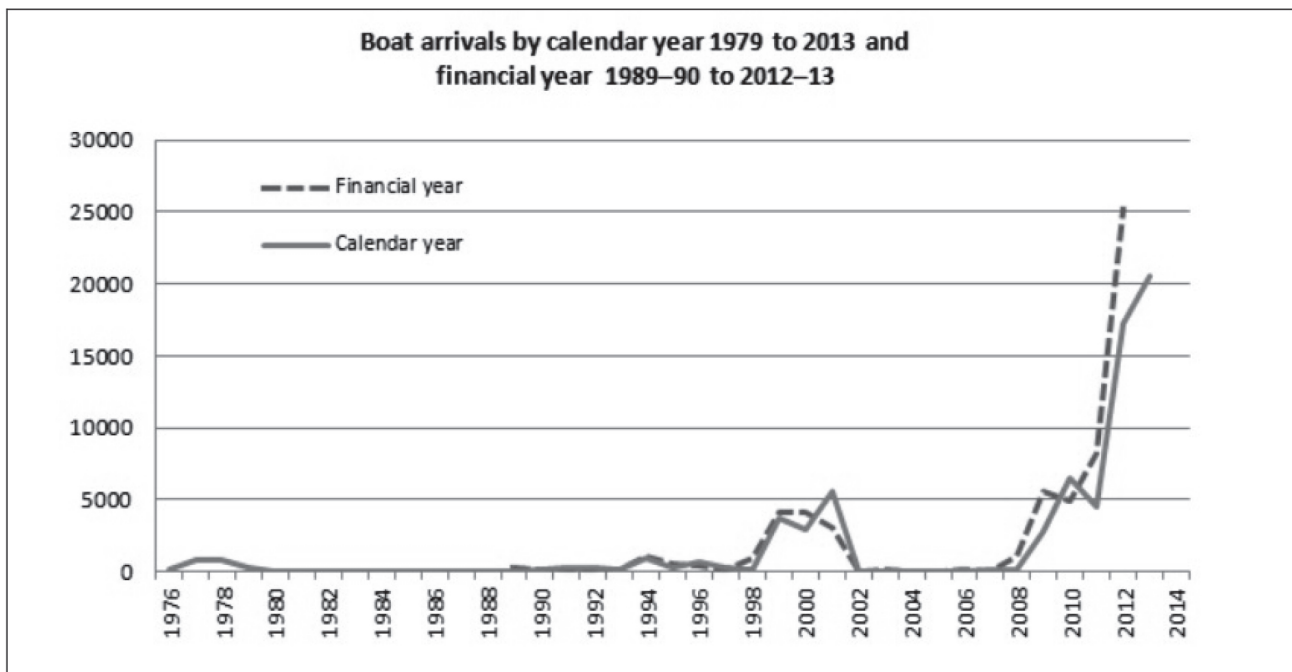


Chart 4.1. Source: Boat arrivals in Australia: a quick guide to the statistics, Research Paper Series, 2013-1, Parliament of Australia - Department of Parliamentary Services (p. 4).

Note: The above chart shows the escalation of number boat arrivals during some years. Approaching the year 2012 there is a drastic increase. This became a concern of the Australian government until finally resulting in the issuance of OSB policy in 2013.

¹⁰ PHILLIPS, J., «Asylum seekers and refugees: what are the facts?», *Parliamentary Library, Research Paper*, (2011), p. 11.

¹¹ PHILLIPS, J. and SPINKS, H., «Boat arrivals in Australia since 1976», *Parliamentary Library, Research Paper*, (2013), p. 1.

¹² WALDEN, M., «Australia's 'Boat People': Then and Now», <https://thediplomat.com/2016/06/australias-boat-people-then-and-now/>, accessed July 19, 2018.

in its territorial waters and blocking ships enter the country. Under the government John Howard, Australia started the «Pacific Solution» policy in 2001. The Australian government imposed this policy towards immigrants who came through the sea without valid documents. Pacific Solution is an effort of the Australian government to maintain Australia's sovereignty and security through strengthening its waters border control¹³. Moreover, Pacific Solution is the Australian government's way of preventing immigrants who claim as asylum seekers to enter the Australian mainland while awaiting their asylum filing process. Through the Pacific Solution policy, the Australian government has the authority to expel ships from their territorial waters¹⁴. Also, Australia has its own interpretation in offering protection on the Refugee Convention.

Furthermore, Australian also started implementing «enhanced screening process» in 2012. This practice conducted by officials of the Department of Immigration of Australia and this is a very brief on board assessment to the IMAs¹⁵. The short screening of the IMAs is understandable as an Australian government effort to fulfill its responsibility on «non-refoulement» towards refugee. Then, the result of this screening used as a reference by the Australian government, on how treat them, whether as asylum seekers or economic migrants. Some of them will be sent to the detention outside Australia while waiting for the process of determining refugee status. While the Australian government will offer some others more of them to return to their home country «at their own discretion».

The Australian government implemented above practice due to under United Nations International Refugee Convention 1951 and Protocol Relating to the Status of Refugees 1967, the state that ratified it has legal obligations on refugees. Therefore, as a country that signed convention and the protocol, Australia has an obligation to take refugees and not to return them to their origin countries¹⁶ once they meet the criteria as refugees and their status granted by UNHCR. The principle of not to repatriate refugees to their country of origin in which they feel fear of persecution is known as «non-refoulement» in the United Nations. Thus, as long as UNHCR has not determined yet whether their status as a genuine refugee or not, then they are in the protection of the convention. Then, the country in which they are situated should protect them and apply non-refoulement until their status is determined.

However, in its implementation, Australia makes domestic policies to repel the wave of refugees who come without legal document by don't let them enter onto Australian soil. These policies are for those who come by boats which the number keeps increasing especially from the most conflicted countries. In this regard, Australia uses the right to sovereignty in controlling territory. This interest then formulated into various policies by the Australian government, especially from the administration under Prime Minister John Howard until Malcolm Turnbull. However, along with the increasing number of refugees, this has become an important issue of the Australian government. The policy in dealing with immigrants is one of the issues that almost always raise in the general election in Australia. This has influenced Australia's party and parliamentary policies. This is how the «turn back boats» policy submitted by Tony Abbott to the Australian parliament right before he became a Prime Minister of Australia.

However, referring to the provisions of the international convention then this policy is contradictory to the principle of protection to refugees. As known, the IMAs flee from their own countries and enter into another without a visa to get asylum due to an urgent situation¹⁷. In reality, not all refugees can prepare visa and documents before heading to the destination country to get asylum. It is understandable that due to the situation they have to flee to avoid persecution in their countries.

As mentioned earlier, in 2013 Tony Abbott reapplied the boat turn back policy¹⁸. This policy then continued through OSB program by turning back boats in its operation. The two policies are almost the same that is to block the boats of immigrants trying to enter Australia. The fundamental difference in the policy of «turn back boats» policy is stricter in its implementation towards asylum seekers. Based on this policy, the asylum seekers who come by boat without visas have no chance to get resettlement in Australia although they are genuine refugees. Furthermore, the Australian Government declares that ships with the Indonesian flag that try to enter Australian territorial waters illegally will push out by the Australian navy¹⁹.

Moreover, Tony Abbott as Prime Minister asserted that they will accept neither those who come illegally into Australia nor those who enter through the people smugglers. This provision became effective after the agreement

¹³ RAJARAM, P. K., «Making Place: The «Pacific Solution» and Australian Emplacement in the Pacific and on Refugee Bodies», *Singapore Journal of Tropical Geography*, 24 (3), (2002), p. 2.

¹⁴ DONEGAN, L. R. W., «A Just and Sustainable Solution to the Boat People Predicament in Australia?», *Honors Theses*, Paper 233, (2015), p. 8.

¹⁵ *Ibid.*, p. 23.

¹⁶ STEVENS, C. A., «Asylum Seeking in Australia», *IMR*, vol. 36, n° 3 (2002), p. 864.

¹⁷ O'DOHERTY, K. and LECOUREUR, A., «Asylum seekers», «boat people» and «illegal immigrants»: Social categorisation in the media, *Australian Journal of Psychology*, vol. 59, n° 1, (May 2007), p. 3.

¹⁸ The boat turn back policy implemented from 2001-2007 by Howard government. Then, this policy discontinued under new Labor Government on 2007. On 2012 Australian government reopening Nauru Regional Processing Centre and Manus Regional Processing Centre followed by OSB policy under Abbott government.

¹⁹ KARLSEN, E. and PHILLIPS, J., «Developments in Australian refugee law and policy (2012 to August 2013)», *Parliamentary Library, Research Paper Series*, 2014-15 (2014), p. 3.

Destination	Since OSB commenced (18 Sep 2013) to 18 Sept 2017
Manus Island	770
Nauru	1,355
TOTAL	2,125
Number Voluntary returns to country of origin	624

Chart 5.1. Source: Department of Immigration and Border Protection of Australia (<http://newsroom.border.gov.au>).

Note: The table above shows the total number of immigrants who are still trying to get into Australia after enactment of the OSB policy. This means that the Australian government’s policy does not necessarily dampen the intention of immigrants and asylum seekers come to this country.

between Australia with the Nauru and PNG governments in June 2013. According to this agreement, the Australian government will locate the asylum seekers who arrive after July 2013 during the assessment process and resettlement in both countries²⁰. The following table is the number of immigrants who transferred since the operation turning back boats (the number up to the last month before The Manus Regional Processing Centre closed on 31 October 2017).

Based on a report of UNICEF and Save the Children, to implement the policy offshore processing, the Australian government spent \$400,000 per person, per year²¹, while for the operational cost of «turn back boats» policy for three years from July 2013 to July 2016 is estimated at \$295 million²². This does not include the cost of border enforcement that spent each year, also the assistance provided in the cooperation of marine security with other countries.

6. PROBLEMS FACED BY THE AUSTRALIAN GOVERNMENT AFTER THE IMPLEMENTATION OF TURN BACK POLICY SINCE 2013

The «turn back boats» policy does not only affect in large operational costs but also arises various issues. Various violations, social and bilateral issues arise following its application. Here are various issues related to the policy.

1. The issue related to sovereignty and bilateral relations with Indonesia
In general, most of the ships entering Australian waters and transporting IMA’s come from Indonesia, which is geographically near to Australia. On the other hand, Indonesia, from the outset has stated never to agree Australia’s policy on turn back boats. In implementing this policy, the Australian Navy dispels the ships that bring immigrants back to Indonesian

waters. Moreover, various information mentioned that during the operation Australian naval vessels had entered Indonesian territorial waters to push the boats. This is a breach to Indonesian territorial. Some media reported that between December 2013-January 2014 Australian Navy had entered Indonesian territories for six times²³. This violation opposed by the Indonesian government because of disturbing territorial integrity and sovereignty as a nation.

2. Intercepting and detaining the vessel of asylum seekers at the sea is a part of the implementation of Australian government policies. Related to this practice, the Australian government faces lawsuit after the authorities detaining 157 Sri Lankan asylum seekers at sea. These asylum seekers were intercepted on June 2014²⁴. The act of detaining the asylum seekers on a customs vessel sea for nearly a month has also come under fire from humanitarian activists and the United Nations. However, the asylum seekers were fleeing their country due to human rights abuse and political violence in their country. This case then brought to the High Court, even though at the end ruled on January 28, 2015, that detaining the asylum seekers for almost a month at sea was legal under Australian domestic law²⁵.
3. The placement of asylum seekers in Nauru and Manus Island (PNG) gets widespread international criticism. As mentioned earlier, the Australian government refuses to accept asylum seekers who come by sea without valid documents. Then, the Australian government send and place these asylum seekers to the

²⁰ *Ibid.*, p. 15.

²¹ BUTTON, L. and EVANS, S., «AT WHAT COST? The Human, Economic and Strategic Cost of Australia’s Asylum Seeker Policies and the Alternatives», *Save the Children Australia and UNICEF Australia’s report*, (2016), p. 4.

²² *Ibid.*, p. 48.

²³ «Australian vessels ‘unintentionally’ entered Indonesian waters six times», <https://www.theguardian.com/world/2014/feb/19/australian-vessels-unintentionally-entered-indonesian-waters-six-times>, accessed September 15, 2017.

²⁴ «Detention of 157 Tamil asylum seekers on board ship ruled lawful», <https://www.theguardian.com/australia-news/2015/jan/28/detention-157-tamil-asylum-seekers-on-board-ship-ruled-lawful>, accessed July 21, 2018.

²⁵ High Court finds that detention at sea of 157 Tamil asylum seekers was not a breach of Australian domestic law, <https://www.hrlc.org.au/news/high-court-finds-that-detention-at-sea-of-157-tamil-asylum-seekers-was-not-a-breach-of-australian-domestic-law>, accessed July 21, 2018.

immigration detentions of Nauru and Manus Island. They stay at those detentions while waiting for their claims as refugees decided by UNHCR. However, Amnesty International states that placing refugees in Nauru violates international human rights law. According to Amnesty International, there has been a failure to provide a safe environment for refugees as well as serious violations of children's rights²⁶. While things are not much different happening on Manus Island, asylum seekers are often reported to be having an abuse until Australian government finally closed this detention center on October 2017²⁷.

4. The local communities in detention center often involve to the violations of the rights of refugees. UNICEF and Save the Children also noted many cases of abuse, bully and racism against child refugees in Nauru. The various acts of violence experienced by refugees in the detention center are a breach of their rights as refugees. Moreover, Based on UNHCR's assessment about the implementation of the Refugee Convention in Australia and Papua New Guinea, the finding was mostly negative²⁸.
5. Amnesty International reported its investigation that in May 2015, Australian government officials paid Indonesian boat crews to bring back the asylum seekers to Indonesia²⁹. This became an international scandal involving government against asylum seekers. Furthermore, Amnesty International in its report states that this is a violation of international laws and international human rights law, also considers this as a transnational crime³⁰. Moreover, this not only breaches international law but also can lead to the destruction of bilateral relations and the crisis of trust between Indonesia and Australia.

As mentioned earlier, Australia has ratified the international convention relating to refugees. Thus, Australia has an obligation to follow the agreement to protect refugees and the asylum seekers. The policy of «turn back boats» is vulnerable to the possibility of violations against the international law especially the principle of «non-

refoulement». This because the screening process on the boat is not enough to decide someone could continue to the process as asylum seekers or no. As mentioned in the legal basis of note on «non-refoulement» UNHCR that stated in the article 33 (1) that:

«No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion»³¹.

After all, the implementation of «non-refoulement» requires the commitment of countries that have ratified the refugee convention to commit to the protection of asylum seekers.

At this point, if we reflect on Australia's experience in implementing «turn back boats» policy, there are various violations committed by Australia in its operation. This not only violates the sovereignty of another country but also a failure in complying with international conventions towards the basic rights of refugees. If in this country alone there have been many violations in its implementation, then what if other European countries adopt this policy? In general, the conditions and challenges faced by Australia compared to Europe in addressing IMA's are not entirely the same. The destination country also various. Hence, further descriptions and arguments try to answer this question.

7. A WAVE OF REFUGEES AND MIGRANTS IN EUROPE

The refugee crisis hit Europe since 2015. Based on statistical data from Eurostat, the application of Asylum seekers in EU countries around 1.3 million in both 2015 and 2016. This figure increases drastically from only 627 thousand in 2014 and generally the increase more than doubled compared to years previously³². The refugee crisis that hit Europe in 2015, dominated by refugees from war in Syria.

Nevertheless, on the part of European countries (especially Schengen area countries) consider these immigrants are not the real refugees, but rather economic migrants because their arrival in Europe involves people smugglers. This is because most immigrants from countries

²⁶ «Amnesty International says Nauru refugee policy breaks international human rights laws», <http://mobile.abc.net.au/news/2016-10-17/nauru-detention-policy-a-breach-of-human-rights-amnesty/7940652?pfmredir=sm>, accessed September 20, 2017.

²⁷ «Why is the Manus detention centre being closed?», <https://www.aljazeera.com/news/2017/10/manus-detention-centre-closed-171024212852806.html>, accessed July 17, 2018.

²⁸ WARBRIDGE, A., «Australia's 'Pacific Solution': Issues for the Pacific Islands», *Asia & the Pacific Policy Studies*, vol. 1, n°. 2, (2014), p. 340.

²⁹ Amnesty International Report, «By hook or by crook Australia's abuse of asylum-seekers at sea», Index: ASA 12/2576/2015, (2015), p. 14.

³⁰ *Ibid.*, p. 6.

³¹ The Refugee Convention, 1951, <http://www.unhcr.org/4ca34be29.pdf>, p. 233, accessed July 22, 2018.

³² «Number of asylum applicants: drop in 2017», http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics#Number_of_asylum_applicants_drop_in_2017, accessed July 23, 2018.

with unsafe category do not register to get protection in a country with safe category once they have arrived, but prefer to go to another country where they want to register³³.

Following this wave of immigrant arrivals, the countries in Europe begin to implement various policies. Western Balkans route is one of the routes traversed by immigrants. Thus, European countries began to tighten the guard in this area. This route finally closed in March 2016 as one of the European governments' policies on this issue. Furthermore, in 2016 Italy recorded its highest number of arrivals with number topping 182.000³⁴. Based on UN's agency information, since mid-2014 until the beginning of July 2017 more than 500.000 migrants have passed through Italian port. At the same time, the number of migrants through the sea since the beginning of 2017 up to the mid-year reaches 83,650 (The increase is 20% compared to the same period the year before)³⁵.

On April 28, 2015, the European Parliament confirmed the importance of dividing refugees from countries with high refugees to other countries on the basis of solidarity³⁶. All the member countries then agreed on the scheme of distribution of refugees. Nevertheless, in the implementation based on data from the European Commission, until December 2016 out of 160,000 Asylum seekers from Italy and Greece, only 8162 people have been relocated from both countries to other EU member states³⁷. It means this number is only about five percent of the total refugees³⁸. Facing this all Italy then decided to close its port that became the route of refugees on the Mediterranean Sea. The failure of the agreement is the reason for Italy to implement the policy.

On the other hand, Libya is one of the routes for immigrants from various countries in sub-Saharan Africa and Arabian peninsula to Europe. Libya is the eastern route for refugees from Syria before they cross over to Italy, which is like Greece, strategically located and front-line in refugee arrivals to Europe. Therefore, to prevent the entry of immigrants through the Mediterranean sea region, the EU has trained and financed the Libyan coast guard. In its

operation, the coast guards block and push the boats of immigrants that pass on the Mediterranean sea³⁹. Meanwhile, the Italian government has sent military ships together with the Libyan coast guard to intercept the boat of immigrants⁴⁰. Moreover, the Italian government blocks the ships carrying refugees and closes its port for humanitarian refugee rescue ships. By applying this policy it means there will be no more refugees who can enter the country through the Mediterranean Sea route. This is a way to get immigrants unable to reach Italy.

Although there are pros and cons in which this discourse has the full support of anti-immigrant groups. They also make sweeping along the border to mainland Europe. Meanwhile, the humanitarian organizations (NGOs) keep the effort to rescue the immigrants in the ocean. Furthermore, in the case of Aquarius ship, the Italian government refused to let the ship land on its port⁴¹.

Several other European countries also began to take a stand by expelling ships carrying immigrants back to Libya. At this point, Libya has become a gateway for the immigrants from Africa and the Middle East heading to Europe. Some authorities of the European countries also encourage the implementation of this policy. The reluctance of European countries to accept immigrants in the territory on the grounds that they are not genuine refugees. The governments of European countries argue that the ships not only bring asylum seekers but also the immigrants with economic motives.

8. THE COOPERATION BETWEEN EU COUNTRIES AND LIBYAN COAST GUARD TO TURN BACK BOATS OF IMMIGRANTS

The route from Libya to Italy through the Mediterranean Sea is the main route chosen by immigrants to mainland Europe. The weak security and chaos in the country after Muammar Gaddafi's overthrow in 2011 becomes the reason for immigrants to take this route heading to Europe. Hence, for European Countries, Libya is one of the keys and a buffer state for them to prevent immigrants from entering mainland Europe. Therefore, some European

³³ «Vlaho Orepic: 'The Balkan route is formally closed'», <http://www.dw.com/en/vlaho-orepic-the-balkan-route-is-formally-closed/a-37520314>, accessed September 27 2017.

³⁴ FRONTEX, «Risk Analysis for 2017», p. 6.

³⁵ «Europe migrant crisis: Italy threatens to close ports as ministers meet», <https://www.bbc.com/news/world-europe-40470102>, accessed September 30 2017.

³⁶ Council Decision (EU), Interinstitutional File: 2015/0209 (NLE), Subject: COUNCIL DECISION establishing provisional measures in the area of international protection for the benefit of Italy and Greece, p. 3.

³⁷ «EU met only 5% of target for relocating refugees from Greece and Italy», <https://www.theguardian.com/world/2016/dec/08/eu-met-only-5-of-target-for-relocating-refugees-from-greece-and-italy>, accessed September 30, 2017.

³⁸ *Ibidem*.

³⁹ «Migrant rescue boat pulls out of the Mediterranean over Libyan Navy interception of vessels», <http://www.telegraph.co.uk/news/2017/09/04/migrant-rescue-boat-pulls-mediterranean-citing-chaos-confusion>, accessed September 28, 2017.

⁴⁰ «Migration trends shifting across Mediterranean region», <http://www.independent.com.mt/articles/2017-08-21/local-news/Migration-trends-shifting-across-Mediterranean-region-6736178013>, accessed September 28, 2017.

⁴¹ «Italy's Matteo Salvini refuses to let a boat full of migrants land», <https://www.economist.com/europe/2018/06/12/italys-matteo-salvini-refuses-to-let-a-boat-full-of-migrants-land>, accessed July 23, 2018.

countries keep strengthening cooperation in security in the border with Libya.

Moreover, Deutsche Welle news released information that to maintain security in the border area, European authorities have spent about half of the more than 90 million euros (\$103 million) in the Mediterranean route of refugees⁴². This fact shows that most European authorities prefer to take precautions by paying another country to handle immigrants in the border (regardless they are asylum seekers who try to claim refugee status or just economic immigrants) than let them entering into the land and conduct of some screening process to decide their status. In particular, Italy has begun implementing a «turn back boat policy».

However, the European authorities should consider several factors not to impose «turn back boats» policy. This because by implementing «turn back boat» policy, the immigrants who are seeking asylum have no chance to get protection in Europe. Furthermore, they will end up in the detention center out of mainland Europe. The following are some of the consequences for both European countries and especially to immigrants.

-Libyan detention center situation is not safe. Based on Amnesty international report, the refugees were subjected to abuse, including torture and rape⁴³.

-They are treated like slaves. There are several cases of slavery against African immigrants⁴⁴.

-The closure of the Mediterranean Sea route not only adversely affecting the refugees but also cost a lot for European countries.

-This policy will have an impact on the increasing death of immigrants at sea. Based on the EU leaders' policy report that handling refugees in the Mediterranean waters area in 2015, searching and rescuing can reduce the death rate of refugees.

-The report of IOM in July 2018 mentions that throughout 2018 alone, there have been more

than 1000 immigrants killed in the Mediterranean Sea⁴⁵. This can not be denied as the effect of the closure of ports to mainland Europe and «turn back boats» policy.

-The incident of ship Aquarius that carried more than 600 immigrants and stranded in the Mediterranean Sea. The ship stranded after the Italian and Maltese governments refused it to disembark on their ports in June 2018. This is considered as Europe's failure in handling immigrants⁴⁶.

9. THE DIFFERENCE CONDITION IN THE DETENTION CENTER AND TRANSIT COUNTRIES

Discussing the situation faced by immigrants at detention centers in Libya as well as in Nauru and Manus Island (Papua New Guinea), there is no much difference situation. Generally, they become victims of violations of their rights and freedoms. Nevertheless, the Australian government can quickly handle the situation at Manus Island by closing its detention center permanently following widespread international condemnation. While in Libya it seems a bit complicated for the European authorities to close its detention center because after all, Libya is their buffer country in preventing immigrants from entering the European land.

Broadly speaking the issue of immigrants (including asylum seekers) that faced by EU countries is similar to Australia. In the case of immigrants heading to Australia, the transit country and the original boats that brought them mostly come from Indonesia. On the other hand, it is not easy for the Indonesian government to oversee all its territorial waters mainly because of the very long coastline ± 81.000 km⁴⁷, but the situation in Indonesia's internal security is quite stable. This situation is different from Libya, the country has many internal problems that also result in security issues in the country. The domestic situation of countries where the boats depart will greatly affect the immigrants. Also, the lack of government control exacerbates the state of immigrants. This situation gives a chance for the involvement of people smugglers.

⁴² «EU countries decline to help Italy with Mediterranean refugee crisis», <https://www.dw.com/en/eu-countries-decline-to-help-italy-with-mediterranean-refugee-crisis/a-39585373>, accessed September 29, 2017.

⁴³ Amnesty International Report, «LIBYA IS FULL OF CRUELTY? Stories of Abduction, Sexual Violence and Abuse From Migrants and Refugees», Index: MDE 19/1578/2015, (2015), p. 21.

⁴⁴ *Ibid.*, pp. 17-18.

⁴⁵ «IOM: 204 Migran Tewas Tenggelam di Laut Tengah», <https://www.republika.co.id/berita/internasional/afrika/18/07/02/pb7t6c383-iom-204-migran-tewas-tenggelam-di-laut-tengah>, accessed July 14, 2018.

⁴⁶ «Migrant boat turned away by Italy arrives in Spain», <https://af.reuters.com/article/topNews/idAFKBN1JD05V-OZATP>, accessed July 14, 2018.

⁴⁷ MARSETIO, «Strategi TNI Angkatan Laut Dalam Pengamanan Batas Maritim NKRI», *Jurnal Sejarah CITRA LEKHA*, vol. XVII, n°. 1 (Februari 2013), p. 1.

10. CONCLUSION

Throughout the five years «turn back boats» policy by the Australian government, the asylum seekers in this country in difficult situations. The implementation of this policy resulted they were experiencing abuse. Moreover, they experienced a variety of violence since their efforts to reach offshore up to in the detention centers. This all affects their mental health. In applying this «turn back boats» policy, humanitarian values are being ignored, the countries do not fully apply the convention on refugee law. Instead, these countries make their own internal policies and definitions of refugees in dealing with asylum seekers. This is likely to violate the rights of refugees as set out in the Convention Relating to the Status of Refugees, which is as the foundation of international refugee law.

In the case of the refugee crisis in Europe, not all countries willing to involve in overcoming the difficult situation faced by some of the other member countries of European Union. This has resulted in the failure of regional cooperation in handling the crisis. The principle of prioritizing national interests is still the main reason for many countries to be «reluctant» to get involved in overcoming the humanitarian crisis. Basically, national interests will always be the main thing for many countries when dealing with other countries. Therefore, to solve this problem requires commitment from all related parties to cooperate.

In the context of relations between countries, this policy affects bilateral relations. The implementation of the internal policy of a country could be a breach of the sovereignty of another country. Therefore, the principle of mutual respect between countries, especially on sovereignty, must remain as fundamental and important in the relations between countries. Ignoring the existence of other countries in pursuit of national interests is a despicable act and should be avoided.

Moreover, the expenditures spent by countries in the operation of the «turn back boats» policy are inherently ineffective. It would be better spending this to assist and empower the refugees. Various examples of cases after the implementation of OSB policy by the Australian government indicate that this policy is not appropriate in handling immigrants especially for those seeking asylum. Hence, a similar policy is unlikely to be applied in Europe as the situation and problems in the region are more complicated. This far, the government's ways of handling the immigrants heading to Europe is not much different from Australia. Post-closure of the Mediterranean Sea route has increased the risk of drowning victims in the oceans. This all as a consequence of the refusal of European countries to accept immigrants to enter their territories even in urgent situations. In the end, no matter in which country, cooperation and commitment of all related parties involved are necessary for handling immigrants and asylum seekers.