

**THE IMPACTS OF AUSTRALIAN POLICIES ON BOAT PEOPLE  
TOWARDS ITS BILATERAL RELATIONS WITH INDONESIA:**

**An analysis of Indonesia's territorial sovereignty**



**UNIVERSIDAD DE CÓRDOBA**

**Riska Sri Handayani**

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Department of Social and Legal Sciences

DIRECTOR DE LA TESIS: PROF. DR. MANUEL TORRES AGUILAR

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TITULO: *THE IMPACTS OF AUSTRALIAN POLICIES ON BOAT PEOPLE  
TOWARDS ITS BILATERAL RELATIONS WITH INDONESIA: AN  
ANALYSIS OF INDONESIA'S TERRITORIAL SOVEREIGNTY*

AUTOR: *Riska Sri Handayani*

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Campus de Rabanales  
Ctra. Nacional IV, Km. 396 A  
14071 Córdoba

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# DECLARATION

This thesis is a presentation of my original research work. Wherever data and information of others are involved, every effort is made to indicate this clearly, with due reference to the literature and sources of the information.

19 November 2018

A handwritten signature in black ink, appearing to read 'Riska Sri Handayani'.

Riska Sri Handayani

## **ABSTRACT**

Australia is one of the destination countries for the asylum seekers. On the other hand, Indonesia is geographically located close to Australia. Therefore, many of these asylum seekers who come by sea cross Indonesian waters to Australia. Following the increasing number of Irregular Maritime Arrivals (IMAs), the Australian government has established and implemented various policies, one of which is through Operation Sovereign Borders (OSB) policy. However, these policies also affected Indonesia, one of which was a violation of Indonesia's territorial sovereignty by Australian Navy during the operation of policy.

The research conducted in this study is qualitative and carried out through the literature review, also information from mass media which contains various latest information about Indonesia-Australia relations and Australian policies. Moreover, various information is obtained through correspondence and direct interviews with related parties. This research is on-going because various events and policies are dynamic and various policy changes occur throughout the duration of the study. As an example of this change, at the beginning of the study, Indonesia did not have a law that regulates policies towards asylum seekers, then at the end of 2016 the Indonesian government issued a Presidential Decree No 125 of 2016 regarding the handling of asylum seekers and refugees from abroad.

Basically, the violation committed by Australian Navy is contrary to the norms in international law as well as Indonesian national law regarding the sovereignty and national borders. However, in the context of the bilateral relations between the two countries after the incident Australian Navy breached Indonesian territory, in the end it did not have too much impact. Based on the research and analysis conducted, the existence interdependence is more dominant between the two countries. While from the side of asylum seekers and refugees, the application of this policy resulted in the vulnerability of refugees being victims of human rights violations. This can be seen in several cases that happened to asylum seekers and refugees placed in detention in the third country outside Australia.

Keywords : Boat people, asylum seekers, refugees, Operation Sovereign Borders, sovereignty

# **THE IMPACTS OF AUSTRALIAN POLICIES ON *BOAT PEOPLE* TOWARDS ITS BILATERAL RELATIONS WITH INDONESIA: An analysis of Indonesia's territorial sovereignty**

## **CHAPTER 1**

### **Introduction**

#### **1.1. Background of the study**

Indonesia is a country which is geographically located in the intersection between several countries in the Asia-Pacific region. Since two-thirds of the area consist of territorial waters, Indonesia is also considered a maritime country. This position resulted from Indonesian waters being used as strategic maritime routes headed to and from countries surrounding. Ships passing through the waters of Indonesia not only bring legally but also has been carrying illegal passengers, they are illegal immigrants and asylum seekers. The boats used by people smugglers in order to reach the destination country. Technically, Indonesian waters become a transit point for these people who claim as asylum seekers, their destination is Australia which is located adjacent to Indonesia. Indonesian territorial water is the entrance of asylum seekers heading to Christmas island, Australia.

Australia ratified the Convention Relating to the Status of Refugees 1951 and signed the Protocol Relating to the Status of Refugees 1967.<sup>1</sup> Hence, Australia has obligations to accept refugees and asylum seekers who arrive in the country. However, Australia has also a requirement that to process for seeking asylum must enter in country firstly. So, this drives people who claim as asylum seekers from many countries to flock into Australia. While, on the other side, despite Indonesia is not included of the countries which signed this convention, but practically Indonesia is always involved in the handling of refugees. Moreover with the position of Indonesian territory which makes the entrance to Australia, then this country get used to handle asylum seekers who crossing its territorial waters.

The waves of asylum seekers through people smugglers aboard ship has become an

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<sup>1</sup> Stevens, Christine A. "*Asylum Seeking in Australia*", IMR Volume 36 Number 3, Center for Migration Studies of New York, 2002 p.864



issue to Indonesia as a transit country and Australia as the final destination. *Boat people*<sup>2</sup> who claim to be asylum seekers come from various countries for instance Africa, Asia, Middle Eastern countries such as Afghanistan, Sri Lanka, Myanmar, Iran, Iraq, etc. They come illegally passing waters by boat would also endanger their own safety. It becomes more complicated because by policy Australia only accepts asylum seekers who have registered in United Nations as refugees and will not accept those who come illegally into Australia nor those who enter through the people smugglers.

The number of asylum seekers by boat comes to Australia increased in recent years. Based on information published by the Parliament of Australia, in 2013 the number of *boat people* reached 20587.<sup>3</sup> The involvement of people smugglers syndicate in this case can not be denied. These *boat people* are taking a dangerous path to cross ocean by using a boat that is not feasible. Most of them stranded in Indonesia, adrift in the ocean or killed in crash. “Through the years 2000-2013 known as many as 1.484 asylum seekers were killed in an effort to reach the border region”.<sup>4</sup>

Australia actually has built cooperation with Indonesia to overcome the issue related to the asylum seekers. In this cooperation, Australia emphasizes the prevention of the entry of vessels carrying asylum seekers illegally crossing the waters of Indonesia. Indeed, realizing fair cooperation between Indonesia-Australia is not easy. Various issues including wiretapping conducted by the Australian intelligence to President of Indonesia and officials of state government in 2009 also affected the relationship between the both countries. This issue resulted in freezing of bilateral cooperation in the field of maritime security associated with people smuggling by the Indonesian government in November 2013.<sup>5</sup>

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<sup>2</sup> *Boat people* is a term used in media and elsewhere to describe people who come and try to enter Australia through the sea without legal authority. Mostly of them claim as asylum seekers. This term in Australia initially referred to refugees who came by boat from Vietnam during Vietnam War. Australian government officially calls them as Illegal Maritime Arrivals (IMAs).

<sup>3</sup> Janet Phillips, Boat arrivals in Australia: a quick guide to the statistics, (Parliamentary Library Information Analysis Advice, Research Paper Series 2013-14), p. 2

<sup>4</sup> *Asylum Seekers in Australia*, <http://crowdvoice.org/asylum-seekers-in-australia?gclid=CL69pfelsrwCFWfLtAodYm8A6w>. Retrieved February 4, 2018

<sup>5</sup> This information can be found in leading Australian and Indonesian mass media. Retrieved January 9, 2014 from <https://www.abc.net.au/news/2013-11-18/spy-revelations-not-helpful-for-government/5100602> and <https://news.detik.com/berita/2427893/dampak-penyadapan-australia-polri-bekukan-satuan-tugas-people-smuggling>

## 1.2. Problem statement

The issue related to Irregular Maritime Arrivals (IMAs) or commonly called as *boat people* is one of humanity's problems and being international concern. These *boat people* who are entering to other countries claim as asylum seekers and request for refugee status determination. However the refugees have rights to get protection, there is an international consensus as the declaration of the United Nations convention about refugee on 1951, this is confirmed in Article 14, paragraph 1, of the 1948 Universal Declaration on Human Rights “*Everyone has the right to seek and to enjoy in other countries asylum from persecution*”.<sup>6</sup>

As a signatory to the 1951 United Nations Convention on the Status of Refugees and the 1967 Protocol, Australia is obliged not to return refugees to the countries where they fear or have experienced persecution (Stevens, 2002:864). Also Australia should not be refused refugee regardless of how they come into country. On the other hand Australian government implemented policies aimed at reducing asylum seekers who enter the country by sea.

Recently, Australia has own interpretation of its international obligations to offer protection to refugees. Even further, References to the Refugee Convention have been removed and replaced with Australia's own interpretation of its international obligations to offer protection. Changes include a tightening of the definition of 'a particular social group' and to what constitutes 'serious harm' - their must now be a serious risk of harm in the entire country.<sup>7</sup>

So far Australia implements policies to handle the flow of asylum seekers especially those coming illegally by boat to this country. In practice Australia also implemented a controversial policy by pushing the incoming boats turn back into Indonesian waters. Moreover, Australian naval vessels had entered Indonesian territorial waters in order to push the boats. This policy of course opposed by the Indonesian government because disturbing territorial integrity and sovereignty as a nation. Australia also receiving international attention for another policy about send asylum seekers to island of Nauru which is an area outside Australia and to island of Manus located in Papua New Guinea. United Nations High Commissioners Refugees (UNHCR) as the United Nations (UN) agency dealing with refugee

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<sup>6</sup> Information about The Universal Declaration on Human Rights can be find on the Website of United Nations at <http://www.un.org/en/universal-declaration-human-rights/>

<sup>7</sup> Correspondence with Oliver White, Head of Policy and Advocacy, Jesuit Refugee Service Australia, May 28, 2015

assess the Australian policy does not meet the standards of protection for refugees.<sup>8</sup>

As described above, the humanitarian issue of *boat people* who were heading to Australia through Indonesian waters leads to undesirable situation between the two countries. Therefore, starting from this point this study aims to find answers: What is the impact of Australian policies to overcome the *boat people* toward bilateral relations with Indonesia? What is significancy of Australian policies with the concept of “National Interest” and theory of Power from Hans J. Morgenthau?<sup>9</sup>

### 1.3. Objectives of the study

This study aimed to analyze the policies implemented by the Australian government in handling the *boat people* who apply for refugee status determination, in general directed toward those who entered from Indonesian waters and those who stuck in Indonesia. Furthermore, it will be analyzed the effects of the policies adopted by Australia in dealing with refugees and people smuggler toward its relations with Indonesia. More specifically, this study aims to analyze how Australia's migration policy affecting relations between the two countries and its relation to the dynamics of regional peace and security.

Here are the points to be analyzed and achieved:

- To get information and analyze the policies applied by the Australian government in its treatment to asylum seekers and refugees, especially those who go through Indonesian territorial waters
- The effects of the policies implemented by the Australian government to turn back *boat people* into Indonesian territorial waters
- To know how Australian migration policy affects to relations and cooperation between two countries and how these impacts will be affecting dynamics of peace and regional security in Asia-Pacific
- To get information how has been the strategy of diplomacy conducted by the two countries to pursue their national interests.

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<sup>8</sup> *UNHCR says Australia must end offshore detention and stop dividing families*, <https://www.theguardian.com/australia-news/2017/jul/24/unhcr-says-australia-must-end-offshore-detention-and-stop-dividing-families>. Retrieved November 1, 2018

<sup>9</sup> Hans J. Morgenthau was a figure in the study of Internal Politics in realist school. This is related to his concept of interest and power. In the realist view, the state only pursues its own interests.

#### **1.4. Limitation of the study**

There have been many previous studies related to asylum seekers and *boat people*. Various studies have also revealed about the push and pull factors of asylum seekers coming to Australia. But so far there are no studies examine the impact of policies in dealing with *boat people* in particular to bilateral relations with other countries. On the other hand, it is important to find out the indirect impact of the existence of *boat people* since it not only to the countries of origin and destination but also 3rd party as transit and traversed country.

I started this research from the actual problems and situation at that time on 2013. Australian government just implemented Operation Sovereign Borders (OSB), and soon this is become a serious issue between both countries due to violations committed by the Australian Navy during the operation of policy. The Indonesian public questioned the actions taken by the Australian Navy entering Indonesian waters. Compared to similar studies on asylum seekers and *boat people* in Australia, this study is more specific to the impact of the policy to the relations between two countries. Nevertheless, this study also examines information and data about the asylum seekers because this is the basis of Australian policy.

The focus of the investigations raised in this study is related to policy, therefore this study is highly dependent on resources related to the policy. While on the other hand there is not always found official information about some of the current Australian policy and related to some issues. Difficulties, especially in finding the source of a written policy for the controversial and unpopular policies are applied directly in the field. Therefore, resources can not merely rely on the official publication of the Australian government. In this case the resources came from mass media such as magazines, online media, etc. Including the statements issued by Australian government officials associated with the actions taken as well as the response from the Indonesian side. But resources are referenced which has been confirmed at least to one of the parties concerned.

One of the difficulties encountered in finding a written source is associated with unpopular policies. An example is the issue raised lately regarding bribery by Australian officials to people smugglers. The Australian government refuses to confirm the truth. However the other parties involved have confirmed over the truth. This fact can't be ignored and certainly this matter will be a part of the research. However, the biggest challenge in conducting policy research unofficial as it is still maintaining thesis be scientific and realistic but do not ignore the information found in the ground.

## 1.5. Significance of the Study

The significance of research divided into two areas: those related to the theory of national interest, and the resulting research to solve the problem. As a note, national interest is the main focus in this study, which is the aim of international politics of countries within the scope of this research. Nevertheless, in the analysis will also involve various theories such as power, interdependence and sovereignty.

### 1.5.1. Related to the theory of national interest and interdependence

As mentioned above according to the theory of Hans J. Morgenthau regarding national interest, all political action is seen as directed toward the maintenance, increase or demonstration of power. On the contrary, in this study will demonstrate that the foreign policy of a State to pursue their national interests can't always act as "individual actor" egocentric, by showing only power. Therefore, an approach that fits so and include the "struggle" of the interests of all the countries concerned will be required. However, each country to pursue its national interests in international relations and cooperation will reach a point where they have to adapt to the interests of other countries, while fighting for their own interests, due to the linkage and interdependence between all these countries.

### 1.5.2. The results of the investigation to solve the problem

Along with various of current global issues many countries consider tightening their borders as an effort to safeguard their sovereignty. This certainly also has an impact on policy changes towards migrants including asylum seekers in many countries. The problem of *boat people* who claim as asylum seekers is a humanitarian issue faced by many countries. Surely, this problem is becoming more complicated when a third country is involved in the entry of *boat people* to the country of destination. Through this research is also expected to obtain the answer that may arise due to the impact of policies implemented by Australian authority.

However, this study is not only to analyze the policy of the Australian side but also from the Indonesian side. It will be known how these all impact the political relation as well as cooperation of both and how is diplomacy strategy undertaken by the two countries in order to pursue its national interests. At the end of this study is expected to be able to contribute ideas and views as alternative solution for both countries to overcome *boat people* problems. Moreover it is intended to find out win-

win solution between the parties concerned, not only Indonesia and Australia, but also the countries of origin of *boat people*.

## **1.6. Research Methods**

This research is a qualitative study. According to Strauss & Corbin for qualitative research data can come from a variety of sources, including government documents, interviews, newspapers and various sources that can be used to answer research needs (Strauss & Corbin, 1990:5). Therefore, the research method will be done by documentary research such as from source of journals, mass media news articles, as well as the source of the relevant Department of the Indonesia-Australia, UNHCR and various associations and NGOs from both countries. It is also will be doing by interview.

Interviews will be conducted using direct interview methods and correspondence with those related to the policies and asylum seekers such as government officers, international organizations / social workers and previous researchers related to the theme of this research. The scope of the research will be limited by taking a sample of data since the beginning of influx of asylum seekers who came by boat to Australia to the current research process underway. However this data just in general, only to see the comparison of the ups and downs of the numbers that have entered.

The study will be descriptive by observing the patterns used by refugees and *boat people* and then the impact and correlation to the policy pursued by the two countries. The study will be conducted by collecting information about the Australian government policies throughout the range of the research. Will also analyze about the implementation of Australian government policies and then how these will be affect to the relationship with Indonesia. Furthermore this study to see the effects of the policy of one or both countries to the political relations as well as cooperation of both.

Samples of research data of *boat people* not only limited to those who came into Australia through Indonesian waters but all the *boat people* who tried to reach Aastralia. Nevertheless, majority of them crossed the Indonesian waters territory to get into Australia. Will be studied the pattern, and modus of refugees, also the government policies of both countries. The research will explain coherently about the issue of *boat people* heading Australia. This study will be reviewed starting from the root problems behind the asylum

seekers into Australia by boat and the involvement of actors in people smuggler (it will discuss in outline only since there are plenty of research about the involvement of people smuggler). It is closely associated with policies then issued by the Australian government, which in turn also affect its bilateral relations with Indonesia.

Moreover, this research will include international consensus and laws relating to state sovereignty. In this case, including analyzing domestic policies and regulations in the country concerned. Therefore, the law's approach is carried out by examining the regulations and legal instruments both applicable in national and international laws are applied by both countries that have an influence on policies in dealing with refugees and influencing bilateral relations in general.

Theoretically, this research examines theory of Hans J. Morgenthau about National Interest and demonstration of power in study case of Australia-Indonesia. Also through this study will analyzing its correlation with implementation the concept of interdependence between states. Another theory related to the sovereignty that will be analyzed is how the idea of sovereignty from James Crawford can be applied in the Indonesian-Australian case study.

## CHAPTER 2

### Conceptual Underpinnings and Literature Review

#### 2.1. Conceptual Underpinnings for the Study

The idea of the state as an entity can not be separated from the sovereignty attached to it. As an independent entity, sovereignty is owned and inherent in each state. In general, sovereignty is defined as supreme authority within a territory.<sup>10</sup> As a fundamental part of an independent state, sovereignty has the same value and importance for each country. Therefore, sovereignty is a pride and identity for every independent nation. In its implementation citizens' entrust in government to maintain and protect the sovereignty. The state must be aware of any external threats, nevertheless, it does mean that everything that comes from outside the country an enemy.

The theory of sovereignty was elaborated by Jean Bodin (1530-1596). He was a French jurist and political philosopher. In its book “Six Books of a Commonwealth”, Bodin explains the theory of sovereignty. According to Bodin, sovereignty is interpreted as an absolute, highest, unlimited and independent power. Bodin explained this concept as a response to the emergence of conflicts of power claims between religious and state groups at that moment (Jean Bodin : 1576).<sup>11</sup>

In context of bilateral relations, the fact of Australian policies to overcome *boat people* could be ‘a threat’ to its relation with Indonesia. However, from the Australian side, the policy applied an attempt to protect its national interests. As the common knowledge about the concept of the ‘national interest’ which is primary goal in international relations of each state is pursuing its interests. While, the policy-makers are those who determine foreign policy, hence it is important to comprehend the aim of its national interests. (Weldes 1996:276). Thus, a state will endeavor to pursue and protect its national interests through various policies.

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<sup>10</sup> Philpott, Daniel, "Sovereignty", The Stanford Encyclopedia of Philosophy (Summer 2016 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/sum2016/entries/sovereignty/>>. Retrieved July 3, 2018

<sup>11</sup> The details of Jean Bodin’s book “Six Books of a Commonwealth” can be find on [http://www.yorku.ca/comninel/courses/3020pdf/six\\_books.pdf](http://www.yorku.ca/comninel/courses/3020pdf/six_books.pdf)



According to the theory of Hans J. Morgenthau regarding national interests as J. Peter Pham stated: “In the framework that Morgenthau elaborated, every political action is seen as directed toward keeping, increasing, or demonstrating power. In short, the *animus dominandi*, the desire to dominate, is the social force that determines political activity”, (Pham 2008:257-258). It indicates that the use of power is a thing that can't be separated in political action of a State. Furthermore, national interests can aim to increase power, but vice versa, power also can be used by a country in pursuing its national interests.

Morgenthau as a figure in realist school stated that power is the most important element in relation between states. According to Nye, power is defined as the ability possessed to make other parties submit to them, hence they can achieve their objectives (Nye : 2008). In this context, power refers to the 'tools' used by a state-actor to force other countries to submit under their control. Despite power is identical to the use of force in war or conflict (hard power), but power can also be in the form of the ability possessed to suppress others through peaceful and tender ways (soft power), such as through policies, cultural values and persuasive communication (Nye : 1990).

Furthermore, Nye explains that there is a change in using nature of power, the states recently tend to use soft power instead of hard power. This change is believed to be an adjustment to the current time, where the approach between countries through persuasive methods of diplomacy preferably. Therefore, as stated by Joseph S. Nye, soft power is an approach applying co-option rather than coercion.

If every state has a tendency to use power in dealing with another nation-state, then how is the role of the concept of interdependence in the national interest? The concept of interdependence states that a state is not an independent actor on the whole, but the states are interdependent on each other. Then, will the use of power negate the factor of interdependence among States?

According to Robert Keohane and Joseph Nye there are close links between power and interdependence. The actor who less-dependent will use relationship of interdependence of others as power resources in the negotiations on an issue (Keohane & Nye 2001:8). However, in interdependence, according to the opinion of Robert Keohane and Joseph Nye, the military power tends not to be used when dealing in interdependence issues<sup>12</sup>. In this case

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<sup>12</sup> Robert Keohane and Joseph Nye elaborated their opinion about power and interdependence in their book

the interdependence will take over the military role in dealing with other countries.

Furthermore, Robert Keohane and Joseph Nye elaborate the concept of asymmetrical interdependence. According to this concept, a country will be stronger when it has many resources, contrarily, a country will be weak when it has less.<sup>13</sup> This due to resources of a country affect needs and interdependence.

## 2.2. Literature Review

The issue of refugees is rooted in the country of origin of the refugees. The humanitarian issue of refugee triggered by the violation of human rights tolerated by the government or even carried out by a government while the government is incapable to handle or stop it. In the end, this problem leads to internal displacement and eventual refugee flows to other countries. This high number of violations of human rights and then followed by an increase in the flow of refugees, in the end this caused new issues in the destination countries of the refugees (Keely : 1996).

Among studies that discuss the asylum seekers and *boat people* in Australia emphasize the obligation of Australia accept them regardless of how they entered the country. Actually Australian government refuses *boat people* associated with the increase of the wave of *boat people* into the country and request refugee status determination. When in fact the rise in the number of people applying for protection at the border therefore pre-sents considerable challenges to the state (Stevens, 2002:864).

In an attempt to tackle unauthorized maritime arrivals Australian government also made cooperation with Indonesian government as known Indonesian waters is the most important area to transit of refugee flows through the sea (Missbach & Sinanu : 2011). Over the years, Australia has provided Indonesia with infrastructure, equipment and various kinds of technical assistance and training to strengthen its border control capacity (Taylor & Brown, 2010:559). The prevention action also by conducting joint military patrol between both countries in Indonesian territorial waters, which is Australia facilitating in this activity.

Then why mostly (or almost all) of *boat people* come into Australia illegally?

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“Power and Interdependence”, in 3rd Edition, 2001 as stated in Chapter I ‘Interdependence in World Politics’

<sup>13</sup> Andrew Moravcsik, Chapter 13 Robert Keohane: Political Theorist, in “Power, Interdependence and Nonstate Actors in World Politics”, p. 249, 2009

Reaching Australia by airplane is a problem for asylum seekers for several reasons: many may have problems getting a passport; Australia does not issue visas to people from many refugee-producing countries; and carrier fines ensure that airlines are vigilant against asylum seekers (Nethery *et al* 2012:90). This is a contradiction since in other side Australian government doesn't let people who claim as refugee entering the border without any valid documents. Another reason the people left their homes country caused fear of persecution so it's logically that impossible for them for prepare documents. Indeed, the Refugee Convention prohibits countries from imposing penalties on asylum seekers who enter without a passport or visa (McAdam, 2013:438).

People smugglers are involved in the efforts of these IMAs to enter the Australian region. They are the party that provides boats to take them to the nearest beach area in Australia. They are suspected as transnational organized crime (Cameron: 2013). The *boat people* were eventually considered a threat to Australia mainly due to the involvement of people smugglers. In its paper, Cameron revealed about the views of Australian government officials on people smugglers and various efforts to overcome them.

Then how is the cooperation between Australia-Indonesia in dealing with this issue?. As a transit country, Indonesia realizes that Australia has concern on asylum seekers issue and it is important to prevent IMAs come into country. Therefore Australia need to cooperate with another country to handle this situation. (Nethery *et al*, 2012:94). So far, this indicate the relation of both countries at a good level. Australia rely on international cooperation to overcome internal problem, while on the other side Indonesia get support by sea patrol equipment from Australia.

Australian government's efforts to stem the flow of asylum seekers is also applied through legislation. Under the Howard government (1996–2007), “Australia introduced a series of policies popularly grouped under the term the ‘Pacific solution’ that aimed to deter asylum seekers from coming to Australia. Moreover, in 2001, the Australian government also introduced the ‘Border Protection Law’. This statute was designed specifically to ward off asylum seeker boats.” (Missbach & Sinanu, 2011:60).

As also stated in the international refugee law guidebook that no country has the obligation to allow foreigners to enter their country, Kiran O’Doherty & Amanda Lecouteur in Australian Journal of Psychology also stated that :

“although the Convention makes provision for people who are recognised as refugees

to claim asylum, it does not oblige any nation to allow these refugees to enter its territory to make that claim. As a consequence, unexpected arrivals are often compelled to break the law to escape persecution”<sup>14</sup>

Pacific Solution in its implementation involves third countries in the South Pacific region. This is done by transfer of “unauthorised boat arrivals” to processing centres or commonly called as detention center for immigrant in the Pacific Third World countries (Rajaram, 2003:2). Regarding the placement of unauthorized boat arrivals or IMAs, Rajaram emphasizes this Australian policy purpose to strengthen internal security and its borders, In addition, Rajaram described the policy of "Pacific Solution" in making place for the *boat people* in the third country based on the aspects of history, sovereignty and law.

The increase of the wave of migration through the sea to Australia is suspected as an indication that Australia as a target country by people smugglers, and most of them came through Indonesian waters. On the other hand, Australia has set various policies and strategies to prevent people without authorisation to claim asylum come into the country. This is despite the various criticisms of the policies implemented by the Australian government which are considered excessive in securing its national border (Hugo : 2001).

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<sup>14</sup> Kiran O’Doherty & Amanda Lecouteur, “Asylum seekers”, “*boat people*” and “illegal immigrants”: Social categorisation in the media\* Australian Journal of Psychology, Vol. 59, No. 1, May 2007, pp. 2

## CHAPTER 3

### ***Boat People to Australia: Are They Genuine Refugees or Economic Migrants?***

#### **A perspective from situation of the top 5 countries of origin**

In the context of migration, refugees are not the only ones who do displacement, there are also economic migrants. Before proceeding with the topic of refugee and economic migrant, it is important to emphasize the difference between asylum seeker and refugee firstly. However, this will be a reference to comprehend the situation faced by refugees. According to the Convention 1951, someone can be categorized as refugee if :

“Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country...”<sup>15</sup>

Meanwhile, definition of asylum seeker according to Amnesty International is someone who has left their country in search of international protection, but is yet to be recognized as a refugee.<sup>16</sup> As commonly known that there's a process to be recognized as asylum seekers legally. However, they have rights to get protection in another country during the determination process since every person has right to seek asylum. In other words, everyone can seek sanctuary in another state, but after the judgment process by UNHCR as the organization that has mandate to provide international protection to refugees, those who are not recognized as refugees will not have the same rights as refugees. The Convention 1951 do not refer to all migrants but only aims to protect refugees. Furthermore, the country where they are living can sent them back to their home countries.

Various discussions pointed that actually 'boat people' are none other than economic migrants, they are not genuine refugees. Their arrival was considered as a boost of economic factors with an excuse as asylum seekers. Moreover, the 'boat people' came without any complete documents. So far, there are many studies have been done related to the background of their arrival, as revealed by Timothy Hatton in his research: “Most observers would agree

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<sup>15</sup> “Protecting Refugees & the role of UNHCR 2008-09”, p4, UNHCR, 2008

<sup>16</sup> “Refugees, Asylum-Seekers and Migrants”, <https://www.amnesty.org/en/what-we-do/people-on-the-move/>. Retrieved August 5, 2017

that wars and violence, political oppression and human rights abuses of various sorts lie at the root of refugee flights. Less obvious is which particular forces matter most and whether other social and economic factors also play a role” (Hatton, 2008:7).

Australia is one of the destination countries of the *boat people*. Despite, the fact that the number of asylum seekers that coming into Australia are not larger than to other countries and other regions. “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 world” (Phillips, 2011:11). Based on the information in the Department of Immigration Australia, in 2010 Australia received around 10,900 asylum applications, or it means only 1.04 per cent of the global total applications. Then, *boat people* in Australia only a portion of the total asylum seekers in that country. However, it does not mean negated the existence of the *boat people* who try to seek asylum and get protection in that country.

Then, what about the *boat people* who come to Australia, are they genuine refugees? Janet Phillips in her paper about asylum seekers and refugees has revealed that the majority asylum seekers who arrived by boat known as genuine refugees. “Even past figures show that between 70 and 97 per cent of asylum seekers arriving by boat at different times have been found to be refugees and granted protection either in Australia or in another country” (Phillips, 2011:8). They were granted protection as refugees and given permanent protection visas. As genuine refugees, they have rights to get protection and based on the 1951 Convention should not be returned to the country where their life would be threatened.

However, this chapter will be analyzed from the perspective of background of country source of *boat people* that most requested for refugee status determination in Australia. The terminology *boat people* in this chapter refers to those who come by sea or unauthorized maritime arrivals. The aim of this chapter is to explore how the security situation in a country affects the wave of *boat people* to Australia. The analysis will be done on top 5 of source countries of *boat people* based on statistical data that have been taken from 2008-13. Then, it will be identified to the link between numbers of asylum seekers that come into Australia with the situation turn of approximately at the same year in those countries. From this point, it will be concluded the real motive of the arrival of *boat people*.

### 3.1. In the Midst of Refugees and Economic Migrants

Both of the refugees and the economic migrant are group of immigrants who enter the territory of another country, but they are in different purposes. Of course, the regulations and the treatment that have been applied to them will also be different.

#### 3.1.1. Definitions of Refugee

The definition of refugees based on the 1951 United Nations Convention is:

Any person who: owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>17</sup>

However, this definition is not significant that all people who left their country because of war are refugees. “The definition of ‘refugee’ does not cover other individuals or groups of people who leave their country only because of war or other civil disturbance, famine, natural disasters or in order to seek a better life” (Phillips, 2011:2). But then the concept of refugees was expanded by the Convention's 1967 Protocol which is including the problem of displaced people. Moreover, European Union has expanded the definition of refugee included who has fled their own country due to war.<sup>18</sup>

Therefore, some theorists argue that the victims of war are categorized as refugees also, since they left their country because of less protection and cannot return safely to their homes. Nevertheless, the problem is as not simple as in getting their status as a refugee and resettlement. “Though all people who flee conflict can be called refugees, refugee agencies commonly distinguish between refugees and Internally Displaced Persons (IDPs) to decide who is covered by international law and receives assistance and who doesn't” (McMorran, 2003).

#### 3.1.2. Definitions of Economic Migrant

Economic migrants have a different purpose from refugees when moving around within their own country, or from one to another country. “People are also increasingly leaving their home countries to escape economic deprivation and poverty, and fears have

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<sup>17</sup> The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol, Switzerland, UNHCR, p.3

<sup>18</sup> “Human Rights for All: The Rights of Asylum Seekers in the UK”, <https://rightsinfo.org/rights-asylum-seekers/>. Retrieved July 3, 2018

been expressed that many of the asylum seekers are essentially economic migrants who attempt to circumvent the normal immigration application procedures in their search for a better life” (Stevens, 2002:866). This explanation clearly shows the motive of economic migrants and how they avoid immigration procedures.

Migration Watch UK gives the definition of an economic migrant as: “a person who has left his own country and seeks by lawful or unlawful means to find employment in another country”. While Striking Women organization defines economic migrant as: “the movement of people from one country to another to benefit from greater economic opportunities in the receiving country”. Basically, economic migrant occurs because of the desire to get a job for better proper pay and higher income than their country. “One might expect economic migrants to experience an increase in happiness after migration: life in wealthier countries might be better, particularly for migrants who succeed in improving their financial situation” (Bartram, 156:2013).

Meanwhile, according to UNHCR as stated in Introduction to International Refugee Law, economic migrant is persons who left their countries to live in elsewhere, and they do this all with a motivation for a better life in economic terms.<sup>19</sup> Thus, based on this definition, economic migrant refers to those who moves to another country in order to get a better employment and standard of living.

From the differences of the definition above, clearly, it can be concluded prominently about the distinction between refugee and economic migrant, even both of them are the same as migrants in a country. In Australia’s case, following the increase number of economic migrants that coming from different countries, then the arrival of boat people are often labeled as economic migrants who try to enter Australia illegally.

## **3.2. Economic Migrants & Boat People in Australia**

### **3.2.1. Economic Migrant**

The phenomenon of economic migrants in Australia was begun in 1788. According to Department of Immigration and Border Protection (DIBP) of Australia in “*More than 65*

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<sup>19</sup> Achmad Romsan, Usmedi. et al “Pengantar Hukum Pengungsi Internasional: Hukum Internasional dan Prinsip-prinsip Perlindungan Internasional”, UNHCR, Jakarta, 2003, p.29



*Years of Post-war Migration*”:<sup>20</sup>

“The rapid growth of the wool industry in the 1820s created enormous demands for labor and sparked an increase in the migration of free people from the United Kingdom. The social upheavals of industrialization in Britain also resulted in many people emigrating to escape widespread poverty and unemployment. Furthermore, this country became destination for the British, to look for a decent living and out of poverty.”

Until now, Australia is considered as one of prospective countries for job seekers. Moreover, Australia also is one of the developed countries with higher levels of prosperity than the other countries in Asia Pacific. For all immigrants, it is interesting in decided to go to Australia, finding a job and some varieties of economic motives. The following chart is Australia Disposable Income in AUD Million in 2008-14.



Chart 3.1. Source: <http://www.tradingeconomics.com/australia/disposable-personal-income>

### 3.2.2. Boat People

IMAs early history in Australia began in 1976 with the arrival of Vietnamese boat

<sup>20</sup> This information Accessed on 25 May 2015. Currently DIBP changes its name to Department of Home Affairs (DHA). Due to this change, some of internal link of website couldn't be find anymore. However the link can be traced trough chace on [http://webcache.googleusercontent.com/search?q=cache:o4rDUo\\_3OxkJ:https://www.homeaffairs.gov.au/about/corporate/information/fact-sheets/02key&hl=en&gl=id&strip=1&vwsrc=0](http://webcache.googleusercontent.com/search?q=cache:o4rDUo_3OxkJ:https://www.homeaffairs.gov.au/about/corporate/information/fact-sheets/02key&hl=en&gl=id&strip=1&vwsrc=0) but theres some changes on the contain. Another website also cited this information such as Volunteering Australia Organization and can be find on the link [https://www.volunteeringaustralia.org/wp-content/files\\_mf/1438049666VA03895\\_Resources\\_Book\\_Geography\\_MigrationanditseffectonAustralia\\_WEB\\_150727.pdf](https://www.volunteeringaustralia.org/wp-content/files_mf/1438049666VA03895_Resources_Book_Geography_MigrationanditseffectonAustralia_WEB_150727.pdf)

people. The arrival of these asylum seekers is marked by the entry of asylum seekers from the aftermath of Vietnam War<sup>21</sup>. Australia is one of countries that have ratified the Convention Relating to the Status of Refugees 1951 and signed the Protocol Relating to the Status of Refugees 1967. As its consequence, is willing to be resettled refugees in its country. This all marks the beginning of the influx of asylum seekers entering Australia. The number of refugee arrivals by sea is increasing when the fall of Saigon. With regard to the wave of refugees at that time, the Australian government increased the acceptance number of asylum seekers in the country. Until 1982 the Australian government realized the acceptance for permanent resettle about 60,000 refugees<sup>22</sup>.

Based on statistical information from Department of Immigration and Citizenship of Australia, the last few years the influx of asylum seekers by sea is increasing. The trend of increasing numbers of asylum seekers coming by boat began in 2009, and continued to rise sharply until 2013.<sup>23</sup> Even in 2011 the number of increase exceeded the arrival of asylum seekers at the airport.<sup>24</sup> According to the data from DIBP in 2008-13, there were 35.933 the submission of application for refugee status from IMAs. The number just calculated from top 5 countries, they are: Sri Lanka, Afghanistan, Pakistan, Iran and Iraq.<sup>25</sup> This data confirms previous information about the increase in the number of *boat people* starting in 2008-09. The following are the top 5 citizens who apply for asylum in Australia.

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<sup>21</sup> PHILLIPS, J. and SPINKS, H., "Boat arrivals in Australia since 1976", *Parliamentary Library, Research Paper*, (2013), p. 1

<sup>22</sup> Max Walden., "Australia's 'Boat People': Then and Now", <https://thediplomat.com/2016/06/australias-boat-people-then-and-now/>. Retrieved July 19, 2018

<sup>23</sup> This information is obtained from reports on statistical data published by the Australian Parliament; *Boat arrivals in Australia: a quick guide to the statistics*, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1314/QG/BoatArrivals](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/QG/BoatArrivals). Retrieved January 25, 2014

<sup>24</sup> *Australia and asylum seekers: the key facts you need to know*, <http://www.theguardian.com/news/datablog/2013/jul/02/australia-asylum-seekers>. Retrieved May 24, 2015

<sup>25</sup> This data taken from Annual Publication of Government of Australia; *Asylum Trends*, <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/asylum-trends-aus-2012-13.pdf>. Retrieved May 24, 2015

Refugee status determination requests received by top 5 countries of citizenship (IMAs)

Citizenship	2008-09	2009-10	2010-11	2011-12	2012-13
Sri Lanka	41	911	362	820	4949
Iran	13	201	1565	1547	4382
Afghanistan	530	2648	1610	3153	3572
Stateless	24	463	861	603	1608
Pakistan	3	18	71	646	1320
Iraq	62	251	560	373	1099
Other	5	105	137	231	1189
<b>Total</b>	<b>678</b>	<b>4597</b>	<b>5166</b>	<b>7373</b>	<b>18119</b>

Table 3.1. Source: DIBP, *Asylum Trends Australia 2012-13 – Annual Publication* (p.24)

As commonly known that the origin countries of refugees as stated above have a long history of conflict and sectarian issues. The next chart shows the percentage of the number of applications by country of origin.

Refugee status determination requests received by top 5 countries of citizenship in percentage (IMAs)

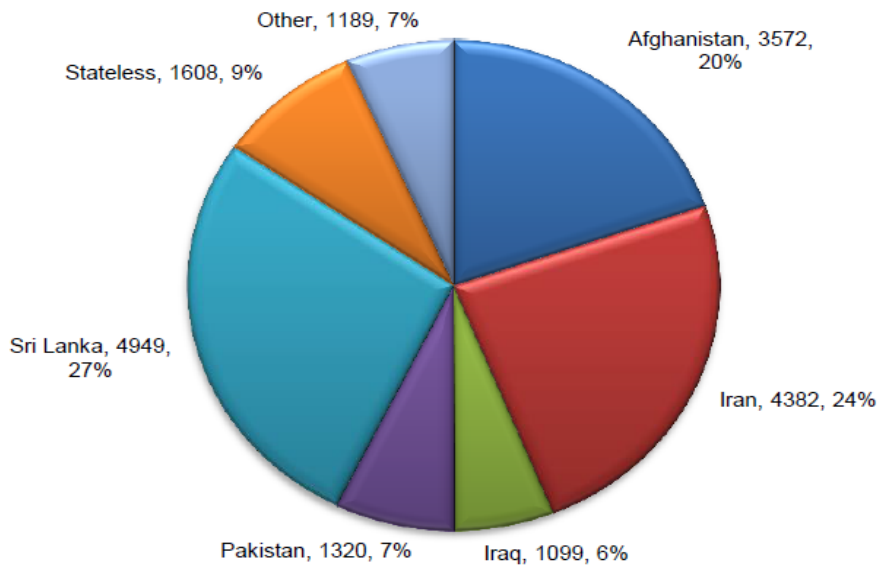


Chart 3.2. Source: DIBP, *Asylum Trends Australia 2012-13 – Annual Publication* (p.24)

The main reason of the *boat people* who come illegally is because they escape from their own country due to fear of persecution, therefore it is almost impossible for them to complete the document before entering the destination country. As noted by SBS in “*Are asylum seekers who arrive by boat illegal immigrants?*”:

“It is often too dangerous for refugees to apply for a passport or exit visa or approach an Australian Embassy for a visa, as such actions could put their lives, and the lives of their families, at risk. Refugees may also be forced to flee with little notice due to rapidly deteriorating situations and do not have time to apply for travel documents or arrange travel through authorised channels.”<sup>26</sup>

### 3.3. The Australian Policy to *Boat People* and the Determination of Refugee Status

The number of *boat people* that came into Australia fluctuates up and down since 1976. But last few years significant increase. The next chart shows that since 2008 the number of *boat people* continued to rise sharply in 2013.

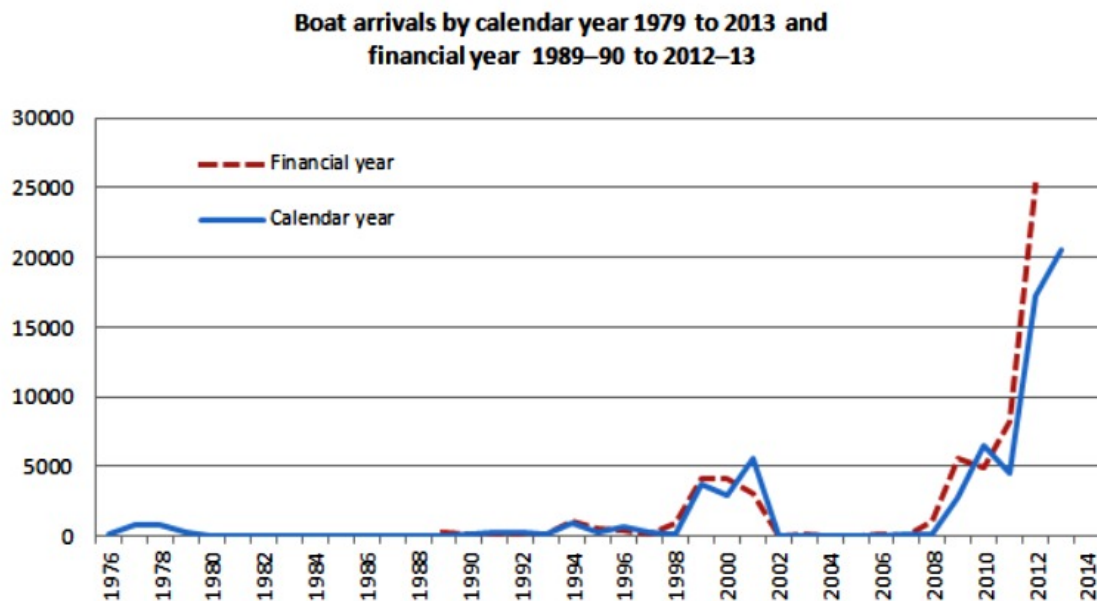


Chart 3.3. Source: *Boat arrivals in Australia: a quick guide to the statistics, Research Paper Series, 2013-1, Parliament of Australia - Department of Parliamentary Services (p.4)*

The above chart shows several spikes of boat arrivals. Approaching the year 2012 there is a

<sup>26</sup> *Are asylum seekers who arrive by boat illegal immigrants?*, <http://www.sbs.com.au/goback/about/factsheets/4/are-asylum-seekers-who-arrive-by-boat-illegal-immigrants>. Retrieved May 24, 2015

drastic increase. This is a concern of the Australian government until finally resulting in the issuance of OSB policy in 2013.

The Australian government policies have been trying to reduce the number of arrivals of asylum seekers who come by boat and claim as refugees to this country. On 2001 Australian government implemented Pacific Solution which is a border protection measures. “Under the ‘Pacific Solution’ unauthorised arrivals at excised places were transferred to the Offshore Processing Centres on Nauru and Manus Island where they were detained while their asylum claims were processed” (Phillips & Spinks, 2013:16).

The policy massively applied recently is turning back asylum seeker boats by Australian Navy through Operation Sovereign Borders (OSB) which was commenced on 18 September 2013. The policy was implemented since the government of Prime Minister Tony Abbott, he asserted that Australian government would not accept neither those who come illegally into Australia nor those who entry through the people smugglers totally will never get resettlement in this country<sup>27</sup>. Even the Australian government through this policy sets zero tolerance towards illegal boat arrivals in Australia.

Since OSB policy enforced the number of *boat people* that come to Australia has dropped dramatically. According to the Minister of Australian Immigration, Scott Morrison, the number of asylum seekers that arrived by boat in Australia has fallen 80 percent since OSB began<sup>28</sup>. This percentage is based on the number of applications submitted to UNHCR in Jakarta (Indonesia) has fallen from 1,608 in September to just 296 in December 2013.<sup>29</sup>

Nevertheless, refer to the UN convention as emphasized by organization Salvation Army in Asylum Seekers and Refugees Mythbusters:

“People arriving by boat are not illegal immigrants. As Australia is a signatory to the UN Convention it is not illegal for a person to seek asylum without a visa, regardless of how they arrive”.

Moreover, the Convention Relating to the Status of Refugees has established the principle of non-refoulement. This is the principle of not to repatriate refugees to their country of origin in which they feel fear of persecution. Therefore, a refugee seeking

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<sup>27</sup> This policy began with the implementation of an agreement to place IMAs on Nauru and Manus Island (Papua New Guinea)

<sup>28</sup> *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-seeker-boat-arrivals-dropping/5201116>. Retrieved June 7, 2015

<sup>29</sup> *Ibid*

protection should not be prohibited from entering a country because it can be considered as a form of refoulement.

But however, the resettlement countries have their own policies, “Although Australia was a signatory to both the 1951 United Nations Convention on the Status of Refugees and the 1967 Protocol, the decision to accept refugees was the prerogative of the Australian government”. (Graeme Hugo 2001: 28). Australia has also set its policies on asylum seekers “It has become increasingly difficult to draw clear distinctions between people who fear and flee persecution and the growing numbers who leave their home countries to escape wars, civil disruptions and natural disasters” (Stevens, 2002:865).

Therefore to be determined as a refugee in Australia, applicants must be able to prove they have a well-founded fear of persecution based on the five convention grounds (race, religion, nationality, membership of a particular social group or political opinion). Beside that Australia has policy that only accept the asylum seekers who registered in UN as refugees. Furthermore, the Refugee Convention have been removed and replaced with Australia's own interpretation of its international obligations to offer protection through the Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014.<sup>30</sup> These all still added some other policies by Australian government lately.

### **3.4. Boat People and the Root of Problems**

The problem *boat people* comes from their country of origin. It will be discussed because it's related to the determination of their status as refugees or not. “Fear of persecution has led millions to flee their homes and seek safety in strange societies where they may be isolated, different, and often impoverished”<sup>31</sup>. Afghanistan, Iraq and Iran are the top three source countries for *boat people*. Condition of conflict and war resulted in the suppression that makes them worth mentioning as refugees. Here is the situation at the 5 countries of origin that the most *boat people* who requested for refugee status in Australia.

#### **1. Sri Lanka**

As has been mentioned before, DIBP of Australia revealed that Sri Lanka is one of

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<sup>30</sup> Correspondence with Oliver White, Head of Policy and Advocacy, Jesuit Refugee Service Australia, May 28, 2015

<sup>31</sup> *The Experience Of Being a Refugee: Insights From The Research Literature*, <https://www.msu.edu/course/pls/461/stein/MNREXP1.htm>. Retrieved May 25, 2015

the top 5 countries requests for refugee status determination from IMAs during 2008-2013. The influx of current asylum seekers has correlation with the conflict in the country. The conflict between the Sri Lankan government with Liberation Tigers of Tamil Eelam (LTTE) had began in 1983. Amnesty USA reported that while human rights abuses were committed by both sides during the long decades of conflict, the final years of the war saw a heightened intensity of fighting, accompanied by soaring human rights abuses: hundreds of enforced disappearances, unlawful killings of aid workers, arbitrary arrests, torture and the use of child soldiers. The conflict has been disruptive the social economic and political stability in Sri Lanka.

Despite the civil war ended in 2009 but it does not reduce fears of its citizens. “In fact in 2012, more than 6,500 Sri Lanka *boat people* arrived in Australia, this is increase thirty times over previous years.”<sup>32</sup> According to the Tamil Refugee Council spokesman Aran Mylvaganam, “most of the refugees who tried to enter Australia by boat are due to torture in Sri Lanka.”<sup>33</sup> Therefore, despite the background of the asylum seekers have left Sri Lanka because of the civil war but can't eliminate their refugee status since the situation in the country that abandoned.

Economic conditions in Sri Lanka had decreased due to the conflict. This is as shown in the United Nations Development Program's 2008 statistics, “Sri Lanka ranked 104 out of 179 countries on the Human Development Index, which measures education, standard of living, and life expectancy.”<sup>34</sup> But along with the conflict that has ended in 2009, the growth economy in Sri Lanka had increased significant. “In the context of the many dangers and pitfalls facing a post-conflict state, Sri Lanka’s recent economic growth is certainly commendable. The Fitch Ratings, published on 30 April 2013, recognised the Sri Lankan economy as strong, with a continual improvement of the current account deficit. GDP grew by 8.2% in 2011 and 6.4% in 2012; current projections are of around 7% growth in 2013 and 2014. Its success is also marked by the decision in July 2012 not to extend the IMF’s stand-

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<sup>32</sup> *After the war: why Sri Lankan refugees continue to come to Australia*. <https://theconversation.com/after-the-war-why-sri-lankan-refugees-continue-to-come-to-australia-14638>. Retrieved June 9, 2015

<sup>33</sup> “Australia klaim mengembalikan pengungsi Srilanka” [http://www.bbc.com/indonesia/dunia/2014/07/140707\\_australia\\_kembalikan\\_pengungsi\\_srilankao](http://www.bbc.com/indonesia/dunia/2014/07/140707_australia_kembalikan_pengungsi_srilankao). Retrieved June 9, 2015

<sup>34</sup> *The Sri Lankan Conflict*, <http://www.cfr.org/terrorist-organizations-and-networks/sri-lankan-conflict/p11407>. Retrieved May 18, 2009



by funding programme.”<sup>35</sup>

Otherwise, the economic growth is as not directly proportionate as the reduction number of those who left the country. On 2012-13, the application for determination refugee status from this country in Australia has actually increased, in the meantime, in 2013 precisely, economy in this country was growing significantly. Therefore, the economic situation can not be the fundamental reason, for the refugees that want to leave Sri Lanka after the war ended in 2009. Furthermore, “in 2012, for the first time Sri Lankans comprised the biggest single national group among boat arrivals in Australia.”<sup>36</sup> “Historically, 90% of Sri Lankan asylum seekers arriving by boat in Australia have been found to be refugees. Even in 2012/13, when the number of Sri Lankan boat arrivals reached its peak, a majority of arrivals were found to be refugees.”<sup>37</sup>

## 2. Iran

Based on data published by Department of Immigration and Citizenship Australia, between 2009-10 the number of asylum seekers increased. Notably, however, the number of Iranians to arrive since January 2011 has increased significantly. “Moreover, another data shows that people from Iran comprised 5 per cent of protection requests in 2009-10, leaping to 30 per cent in 2010-11, then 21 per cent, 24 per cent and 27 per cent in subsequent years.”<sup>38</sup>

The system of government in Iran is identified as a trigger for the refugees to leave their country, “Globally, Iran has been a consistent source of asylum seekers for a long time, given the brutal nature of the country’s theocratic dictatorship.”<sup>39</sup> As Amnesty international reported in 2012:

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<sup>35</sup> *Sri Lanka Rising from the Ashes*,  
<https://globalriskinsights.com/2013/05/sri-lanka-rising-from-the-ashes/>. Retrieved June 9, 2015

<sup>36</sup> *Sri Lankan boat migration to Australia: Motivations and dilemmas*,  
<http://www.jdslanka.org/index.php/analysis-reviews/human-rights/380-sri-lankan-boat-migration-to-australia-motivations-and-dilemmas>, Retrieved June 9, 2015

<sup>37</sup> *Sri Lanka is a refugee-producing country. Here's why*,  
<http://www.theguardian.com/commentisfree/2014/jul/08/sri-lanka-is-a-refugee-producing-country-heres-why>. Retrieved June 9, 2015

<sup>38</sup> *The ups and downs of Iranian asylum-seeker numbers in Australia*,  
<https://www.theaustralian.com.au/opinion/the-ups-and-downs-of-iranian-asylumseeker-numbers-in-australia/news-story/669587831406260c4639a471e0acaa70>, Retrieved June 11, 2015

<sup>39</sup> *Iranian asylum seekers target Australia — but are still fleeing brutality*,  
<http://www.crikey.com.au/2013/07/04/iranian-asylum-seekers-target-australia-but-are-still-fleeing-brutality/>. Retrieved June 11, 2015



“Authorities maintained the tightened restrictions on freedom of expression, association and assembly imposed before, during and following the 2009 mass protests and sought to impose further restrictions. The security forces, including the paramilitary Basij militia, continued to operate with near total impunity and there was virtually no accountability for the unlawful killings and other serious violations committed at the time of mass, largely peaceful protests following the 2009 presidential election and in earlier years”.<sup>40</sup>

This condition affects the number of Iranians seeking protection around the world.

Most of the refugees who come to Australia are the Kurds who are minority ethnic in Iran. As we know the Kurds are the largest nation in the world without a country and live in Iran, Iraq, Turkey & Syria. Kurds in these countries received discriminatory treatment. In Iran, discrimination has taken the form of economic hardship, with the Kurds living in the poorest and least developed regions, and limitations on social and cultural activity. There have been frequent executions of Kurdish leaders and civil rights activists. “The Iranian Human Rights Documentation Centre writes of a long-term pattern of discrimination against Kurds in Iran who live, both literally and figuratively, on the margins of Iranian society.”<sup>41</sup> The government of Iran also did some oppression to prevent the independence and the ideology of the Kurds.

As interviewed on The Sidney Morning Herald to a refugee said, “99 per cent of Iranian *boat people* are fleeing political persecution.”<sup>42</sup> This interview can’t be used as the only reference, but based on the information from DIBP, during 2012 - 13 Iranian boat arrivals who arrived in 2011-12 were found to be genuine refugees are 84,8%.<sup>43</sup> Through the sample data of the year and also the fact in the country in the form of government pressure on the Kurds-Iranians as mentioned above can be concluded that the majority of the flow of refugees from Iran, including those who use a boat heading to Australian isn’t motivated by economic factors.

### 3. Afghanistan

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<sup>40</sup> The Amnesty International Annual Report 2012 – Iran can be find here:  
<http://www.refworld.org/docid/4fbe39334b.html>

<sup>41</sup> *Faili Kurds and the Basij*, <http://www.bmrsg.org.au/faili-kurds-and-the-basij>. Retrieved June12, 2015

<sup>42</sup> *We are fleeing death, not an economy, says refugee*, <https://www.smh.com.au/national/we-are-fleeing-death-not-an-economy-says-refugee-20130702-2pa4v.html>. Retrieved June12, 2015

<sup>43</sup> This information as published on the website of Parliamentary of Australia,  
[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1415/AsylumFacts](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/AsylumFacts). Retrieved November 15, 2018

Afghanistan is one of the poorest countries in the world. Prolonged war and armed conflict in this country resulted many of its citizens who became refugees. The total number of refugees from Afghanistan by UNHCR's report in 2013 was 2.47 million refugees in 82 countries.<sup>44</sup> According to UNHCR on average, one out of four refugees in the world is from Afghanistan. By having huge numbers of refugees Afghanistan becomes the biggest source country of refugees for 33 years.

Immigration Department of Australia reveals that during 2013-14, those who had applied for visa were granted to refugees majority of boat arrivals and originally fled persecution from Afghanistan (2530 applications). "The list of troubled countries reflects the origins of refugees around the world – and if the boat applications were included, Afghanistan would be top."<sup>45</sup> This data shows that the number of Afghan asylum seekers in Australia, especially those who come by boat illegally. The following statistic show that the Afghan refugees occupy the top position of the IMAs 2010-13.

Number of refugee status determinations by countries of citizenship

Citizenship	2010-11	2011 12	2011-12		2012-13		
			Mar Qtr	Jun Qtr	Sep Qtr	Dec Qtr	Mar Qtr
Afghanistan	1621	3179	807	1248	512	373	1622
Iran	1563	1553	191	352	405	369	1897
Iraq	566	368	129	105	103	103	522
Pakistan	70	618	221	266	239	58	519
Sri Lanka	359	825	111	600	1058	565	1746
Stateless	854	576	78	223	116	76	769
Other	141	260	92	63	80	78	389
<b>Total</b>	<b>5174</b>	<b>7379</b>	<b>1629</b>	<b>2857</b>	<b>2513</b>	<b>1622</b>	<b>7464</b>

Table 3.2. Source: DIAC Systems, *Asylum Statistics – Australia: Quarterly tables – March Quarter 2013* (p.10)

Then, what is the background of the arrival of *boat people* from Afghan? As the UNHCR puts it that the fact since 2002, more than 5.8 million Afghan refugees have returned home but they have been facing serious economic and security problems<sup>46</sup>. Therefore more

<sup>44</sup> Information about Afghanistan refugees can be find on UNHCR website in the section of Afghanistan

<sup>45</sup> *Australia and asylum seekers: the key facts you need to know*,

<http://www.theguardian.com/news/datablog/2013/jul/02/australia-asylum-seekers>. Retrieved May 24, 2015

<sup>46</sup> This data taken from: *The Afghan Refugee Crisis*,

than 15 percent of all refugee returnees had experienced secondary displacement, frequently from rural to urban areas.<sup>47</sup> But, not only in this country, it also resulted in refugees returned to the countries outside Afghanistan.

This result is reasonable, because in fact withdrawal of international combat troops continued, but the real situation in the country of Afghanistan is far from conducive. The war between Afghan army and police against the Taliban casualties of civilians. “Even the United Nations recorded a 23 percent rise in civilian casualties for the first six months of 2013 compared to 2012, most caused by insurgents, with the Taliban explicitly targeting civilians they see as supporting the government.”<sup>48</sup>

Based on the report by Human Rights Watch (HRW) on 2014:

“There was continued instability and declining respect for human rights in the country over the past year. This was reflected in attacks on women’s rights, growing internal displacement and migration, and weakened efficacy of the Afghanistan Independent Human Rights Commission (AIHRC). Impunity for abuses was the norm for government security forces and other armed groups”.<sup>49</sup>

This violence is also increased along with the preparation for the presidential elections in the country.

The explanation above describes how the security of civilians and enforcement of Human Rights is still a frightening specter and a serious threat to the safety of Afghans. The implementation of democracy in the country is also not going well. This is as stated by Koser “..it is clear that both security and respect for human rights are fragile in Afghanistan, the other main origin country for boat arrivals in Australia” (Koser, 2010:6). “Therefore, it's not peculiar the number of Afghans seeking safety outside the country also grew, with some making dangerous journeys from Afghanistan through the mountains into Iran toward Europe or by boat to Australia.”<sup>50</sup>

#### 4. Pakistan

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[http://www.outlookafghanistan.net/topics.php?post\\_id=12504](http://www.outlookafghanistan.net/topics.php?post_id=12504). Retrieved November 15, 2018, moreover Information about this can be find on UNHCR website in the link <http://www.unhcr.org/50a9f82a854.pdf>

<sup>47</sup> *Afghanistan*, <http://www.unhcr.org/4fc880b20.pdf>. Retrieved June 13, 2015

<sup>48</sup> *World Report 2014: Afghanistan*, <https://www.hrw.org/world-report/2014/country-chapters/afghanistan>. Retrieved June 13, 2015

<sup>49</sup> *Ibid*

<sup>50</sup> *Loc.cit.*

Up to 2014 UNHCR remained to put Pakistan as the host of the largest number of refugees in the world (1.6 million refugees).<sup>51</sup> Ironically, in same time Pakistan also as the one of top source country of refugees in Australia. According to DIBP's data, during 2012-13 the striking of applications for asylum is increased from IMAs group of Pakistani as many as 1320 applications. It is more than the period before in 2011-12 that only 646 applications.<sup>52</sup>

Actually how is the domestic situation in Pakistan itself? Pakistan is one of the country, that has history of conflict such as territorial dispute with India over Kashmir (the conflict had already begun since 1947), fighting between the Pakistani army to the Taliban and the issue of "ethnic cleansing" of Hazara. Hazara is a community minority who living in Quetta, Pakistan. "The vast majority of Hazaras are Shia Muslim (Shiites) and are therefore declared "heretics" by militant Sunni Islamist groups like Lashkar-e-Jhangvi."<sup>53</sup>

Physically, "Hazara is different with the Pakistani and there many theories of origins of the Hazara. One of theories said that the Hazara could be of Turko-Mongol ancestry, descendants of an occupying army left in Afghanistan by Genghis Khan."<sup>54</sup> Not only differences in appearance, but also Hazara is known as Shiite follower. This resulted in Hazara members being subjected to violence from Sunni extremist armed groups. Hazara claimed that many victims from their group due to this violence.<sup>55</sup>

Anti-Shia sentiment in Pakistan has resulted in Hazara community have experienced increasing persecution, during the current wave of sectarian violence across Pakistan. According to Human Rights Watch report published in 2104, several hundred have been killed in steadily worsening violence since 2008. This violence makes Hazara community living in fear in Pakistan. "In Quetta, mostly Hazara men keep a low profile and are discreet in their movements, especially outside the enclave area where they are easy targets."<sup>56</sup> Sectarian violence has prompted many people to leave Pakistan and seek protection abroad. Some refugee's organizations in Australia and the mass media released the results of

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<sup>51</sup> *UNHCR report shows further growth in forced displacement in first half 2014*, <http://www.unhcr.org/news/press/2015/1/54abe0e66/unhcr-report-shows-further-growth-forced-displacement-first-half-2014.html>. Retrieved June 13, 2015

<sup>52</sup> *Australian Government Department of Home Affairs' Public Report 2012-13*

<sup>53</sup> *Hell on Earth': Inside Quetta's Hazara community*, <http://www.bbc.com/news/world-asia-22248500>. Retrieved June 13, 2015

<sup>54</sup> *Who are the Hazara?*, <http://tribune.com.pk/story/267225/who-are-the-hazara/>, Retrieved June 13, 2015

<sup>55</sup> *Pakistan Reels With Violence Against Shiites*, [http://www.nytimes.com/2012/12/04/world/asia/pakistans-hazara-shiites-under-siege.html?\\_r=1](http://www.nytimes.com/2012/12/04/world/asia/pakistans-hazara-shiites-under-siege.html?_r=1). Retrieved June 13, 2015

<sup>56</sup> *Pakistan's Hazara: 'It's like living in jail*, <http://www.aljazeera.com/humanrights/2014/12/pakistan-hazara-it-like-living-jail-2014123114655754509.html>. Retrieved June 14, 2015

interviews with the *boat people* of Pakistan who came from the Hazara community. They fled their homes and country because of persecution.

## 5. Iraq

The increase of sectarian violence in Iraq had been occurred since the invasion of United States (U.S) military in 2003. U.S. occupation in Iraq did not create democracy in the country as stated as one reason for the invasion, "...On the other hand, U.S. officials and policy experts have increasingly come to believe that it is precisely the lack of democracy in many of these countries that helps breed Islamic extremism."<sup>57</sup> In reality, instead of building democracy and peace, the occupation has actually ignited the civil war, triggering a crisis and protracted conflict in this country.

Sectarian conflict in Iraq involves Sunni and Shia and backed by militia groups. The tension between both sectarians has been going on for a long time, however U.S. invasion of Iraq has exacerbated the conflict. According to an academic study published in the United States as revealed by Huffington Post on 2013, nearly half a million people have died from war-related causes in Iraq since the US-led invasion in 2003. These victims linked to the invasion and insurgencies such as social conflicts. "It escalated in 2006 with the proliferation and intensification of violence by Shiite militias, who ostensibly seek to defend Shiites from the Sunni insurgents and who have pursued this end with "ethnic cleansing" and a great deal of gang violence and thuggery."<sup>58</sup>

In 2011 the U.S. has officially pulled out of Iraq but sectarian conflict continued. Civil war, violence and "ethnic cleansing" has resulted Iraqis fled their homes and country. UNHCR report says in 2013 the number of people who displaced or fled from Iraq about 1.5 million<sup>59</sup>. In the meantime, in 2011, globally, Iraqi refugees numbered 1.4 million<sup>60</sup>, with the biggest concentration being in Syria, also a number of them went to others countries include Australia by boats. Not surprisingly if Iraq is one of the top three of source countries for *boat people* in Australia. This number is also an indication that the violence in Iraq continued after the US and its allies left the country.

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<sup>57</sup> *Promoting Democracy and Fighting Terror*, <https://www.foreignaffairs.com/articles/2003-01-01/promoting-democracy-and-fighting-terror>. Retrieved June 14, 2015

<sup>58</sup> *Iraq's Civil War*, <https://www.foreignaffairs.com/articles/iraq/2007-03-01/iraqs-civil-war>. Retrieved June 14, 2015

<sup>59</sup> *UNHCR Report 2013* – section Iraq

<sup>60</sup> *Who are Australia's 'boat people', and why don't they get on planes?*, <https://theconversation.com/who-are-australias-boat-people-and-why-dont-they-get-on-planes-8361>. Retrieved June 14, 2015

Then what about economic sector?. The unemployment rate in the country which is also as one indication of economic condition, according to the World Bank is in the range between 15.2% -16.0%.<sup>61</sup> However, this percentage certainly can't be compared as they are risking their lives to enter Australia by sea as mere economic motive. This also proved by the fact that IMAs from Iraq is one of top 5 countries of refugees status determination during 2008-2013 (check table 3.1 and 3.2).

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<sup>61</sup> The detail information can be find on the website of World Bank in Iraq country

## CHAPTER 4

### Australian Government's Policies in Handling IMAs

Australia is a country that has a long experience in handling refugees. Along with that, the Australian government's policies towards asylum seekers since the initial stages of their arrival until now also have experienced various changes. These policy changes to adjust the trend of the influx of asylum seekers to Australia. Despite the fact that Australia has ratified The Convention Relating to the Status of Refugees, the Australian government considers it is necessary to secure its national interests from the wave of boat people by implementing various policies. The following are some of the policies implemented by the Australian government.

#### 4.1. Pacific Solutions

On 2001 the Australian government under Jhon Howart's administration implemented Pacific Solution policy. Pacific Solution is an effort to safeguard Australia's security and sovereignty through the strengthening its border. Through this policy the Australian government seeks to prevent immigrants who claim to be asylum seekers from entering the Australian mainland while awaiting their asylum submission process. Based on Convention, even though people have their rights to apply as asylum seekers in a country but there is no obligation for the country to let them enter to the territory to make this process.<sup>62</sup> In fact, the nothingness of this rule for the countries that have ratified the convention is the basis for the Australian government to implement this policy.

Through the Pacific Solutions, Australian government has authority to expel foreign-flag vessels from their territory<sup>63</sup>. Regarding to Pacific Solution, the Australian government stated that this country has its own interpretation on the Refugee Convention and its international obligations to offer protection. However, public believe this policy actually is a form of Australian government concern that those who come by boats more likely are non genuine refugees and come using deceptive means to enter this region.<sup>64</sup> On the other hand,

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<sup>62</sup> Kieran O'Doherty & Amanda Lecouteur, "Asylum seekers", "boat people" and "illegal immigrants": Social categorisation in the media, *Australian Journal of Psychology*, Vol. 59, No.1, May 2007, pp.2

<sup>63</sup> Donegan, Laura Rose W., "A Just and Sustainable Solution to the Boat People Predicament in Australia?" (2015). Honors Theses. Paper 233. p.8

<sup>64</sup> Prem Kumar Rajaram, "Making Place: The "Pacific Solution" and Australian Emplacement in the Pacific and

the Australian government believes that Pacific Solutions is an ongoing effort to protect internal security from the arrival of asylum seekers who are IMAs where they come into Australian territory without legal documents.

In an effort to prevent immigrants from entering mainland Australia the Australian government cooperates with Pacific countries namely Nauru and PNG to make detention for asylum seekers. In addition, in 2001 the Australian government also imposed excised migration zones to the outermost islands of Australia which are often the destination of ships carrying immigrants.<sup>65</sup> These outermost islands include Christmas Island, Cocos Islands and Ashmore Reef. islands. It means that these islands are no longer immigration zone, thus that asylum seekers can no longer enter the area to claim asylum or just wait for the process until their status is decided. Along with all policies and Pacific Solution policies asylum seekers will be sent to outside Australia at third countries.

Previously, the implementation of the Pacific Solution policy by the Howard government was motivated by the Tampa crisis in August 2001. A total of 438 Afghans, Pakistanis and Sri Lankans came by boat heading to Australia and then rescued by Norway container (Australia refuses entry to asylum seekers.<sup>66</sup> However the Australian authority refused them to enter Australian soil. Despite widespread international criticism, Justice North's decided the Australian government's appeal that foreign nationals do not have legal rights to enter Australia.<sup>67</sup> This incident was one of the reasons behind the Australian government's policy to legally implement Pacific Solution and place boat people in third countries outside Australia.

Furthermore, during the Howard administration the Australian Government has set various rules to the asylum seekers.<sup>68</sup> These changes and increasingly tightened rules are an attempt by the Australian government with reasons to protect this country from the tide of the arrival of asylum seekers and prevent those who enter illegally. In addition, there are also various requirements to fulfill refugee status according to criteria set by the Australian

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on Refugee Bodies, Department of Geography, National University of Singapore and Blackwell Publishers Ltd, 2003, p.292

<sup>65</sup> Tom Lansford, "Immigration", Greenhaven Press, 2009, pp.174

<sup>66</sup> Bebe Loff & Jim Black, "Australia Refuses Entry to Asylum Seekers", The Lancet Vol. 358, September 8, 2001

<sup>67</sup> Prem Kumar Rajaram, "Making Place: The "Pacific Solution" and Australian Emplacement in the Pacific and on Refugee Bodies, Department of Geography, National University of Singapore and Blackwell Publishers Ltd, 2003, p.297

<sup>68</sup> *Loc.cit.*



government. However, at the end Pacific Solution policy stopped on 2007, this was followed by the number of IMAs that entered throughout the years 2008-2012 increased dramatically (See on chart 3.3).

The increase in the number of IMAs was later responded by the Australian government through various policies. These policies not only have an internal impact in dealing with the arrival of refugees but also affect other countries which are indirectly related to this situation. However, In the end, the region's geographical situation is something inevitably influencing the dynamics of international politics and relations between countries. Thus, this policy raises excesses in international geopolitics that have an impact on other countries.

## **4.2. Operation Sovereign Borders**

As mentioned on the previous chapter, the "Operation Sovereign Borders" has started on September 2013. Along with the increase of IMAs, the policy towards IMAs is an important issue and political commodity in Australia. The Australian Government also faces domestic pressure regarding policies on immigrants especially towards who come by boat. The pressure comes from the Australian community and parliament, this issue raised in every election. However, according to the rules in the international convention, the signatory countries will not impose penalties on those who enter illegally for seeking asylum<sup>69</sup>. The right of refugees not to be punished for illegally entering certain countries is clearly stated on article 31 of the 1951 Refugee Convention<sup>70</sup>. However, the Australian government seeks to overcome the wave of immigrants, especially IMAs through various domestic policies.

Previously, on July 19, 2013, Australian government declared that asylum seekers who came by boat without a visa will never be settled in Australia even if they were genuine refugees<sup>71</sup>. This is one of the government's strategies and becomes 'shock therapy' to prevent asylum seekers from entering Australia illegally. While for national interests, this policy aims to maintain Australia's security and sovereignty. However, the arrival of illegal immigrants

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<sup>69</sup> Jastram, Kate & Achiron, Marilyn, REFUGEE PROTECTION : A Guide to International Refugee Law, 2001, p.94

<sup>70</sup> Text of the 1951 Convention Regarding the Status of Refugees, p.39, UNHCR Media Relations and Public Information Services, Geneva

<sup>71</sup> "Asylum seekers new laws will ban boat arrivals for ever, applying for australian visas news story" <http://www.heraldsun.com.au/news/victoria/asylum-seekers-new-laws-will-ban-boat-arrivals-for-ever-applying-for-australian-visas/news-story/2ce530c232e03e9886a3fd7b0aff5690>. Retrieved September 9, 2018

involving human smugglers is considered as a threat to Australia's internal security. Moreover, this aims to minimize the social impact arising from the arrival of asylum seekers. For the Australian government, by localizing immigrants to detention centers in third countries, it will be easier to handle including sending them back to their home countries if they are not proven to be genuine refugees.

In implementing this policy, one of the criterias for ships that are included in the provisions pushed by Australian Navy is ships with Indonesian flag and crews entering Australian waters illegally<sup>72</sup>. The mention of the Indonesian flag ship openly seems to have been triggered by the situation in which Indonesian territorial waters is one of the main routes for immigrants who seeking asylum to enter Australia. Moreover, many ships from Indonesia involving a network of human smugglers bring illegal immigrants into Australian waters.

Even long time before serving as Prime Minister, Tony Abbott made a controversial statement on Australia-Indonesia bilateral relations :

“Within a week of taking office, I would give new orders to the navy that, where it is safe to do so, under the usual chain-of-command procedures, based on the advice of commanders-on-the-spot, Indonesian flagged, Indonesian crews and Indonesian home-ported vessels without lawful reason to be headed to Australia would be turned around and escorted back to Indonesian waters.”<sup>73</sup>

The next Australian policy in implementing this OSB policy or commonly referred to as “turn back boats” policy by pushing them back into Indonesian waters as if getting approval. Indonesian-flagged vessels and illegal immigrants despite claiming to be asylum seekers but without a visa are justifying this policy in its operational implementation. Meanwhile, Australia also made domestic law as the basis for refusing the boat people to enter the territory of their country. These reasons then legitimize the policy of "turn back boats" with all its operational implementation.

Initially, this policy purposed to stop the boats that try to enter to Australian borders. This policy was implemented due to the high number of boat people who entered Australia throughout 2010-2012, Political factors are also the reason for the enactment of this policy as one of the efforts made by the Australian government in overcoming boat people. However,

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<sup>72</sup> Janet Phillips & Elibritt Karlsen, “*Developments in Australian refugee law and policy*”, Social Policy Section, 2012 to August 2013

<sup>73</sup> Tony Abbott (Leader of the Opposition), The Coalition’s plan for more secure borders, address to the Institute of Public Affairs, Melbourne, speech, 27 April 2012) as taken from *Developments in Australian refugee law and policy: the Abbott and Turnbull Coalition governments (2013–2016)* Elibritt Karlsen, Law and Bills Digest Section - Janet Phillips, Social Policy Section

along with the increasing number of refugees entering Australia, this has becoming a central issue in the Australian government. Therefore, it cannot be denied that this also influences policy in the parties and the Australian parliament.

As commonly known that previously on August 2013 the Coalition's Policy for a Regional Deterrence Framework to Combat People Smuggling urged Australian government to prevent boat people from entering Australian territorial waters and stop the boats. According to the coalition, this is one of the ways to prevent illegal movement in the region. As already mentioned, mostly of those boats travel from Indonesia and this country is the main route of operation of people smuggling. This eventually resulted in the incident of the entry of the Australian navy into Indonesian territorial waters when pushing back the boats carrying immigrants who claimed as asylum seekers.

After the OSB policy was set by the Australian government in September 2013 those who arrived without a visa would not be placed in Australia. Then, in the implementation of "turning back boats", whether they are genuine refugees or not will be placed in Nauru or Papua New Guinea unless there are other possible options outside of these countries.<sup>74</sup> This shows that in a policy that was re-enacted in the era of Tony Abbott's administration it was more strictly than "Pacific Solution" under Howard government. Something that cannot be negated that the rules in the international refugee convention allow each country that has ratified the convention to make its own national rules for the matters not specified in the convention.

Furthermore, based on data from Australia's Ministry of Immigration and Border Protection, since the enactment of this policy throughout December 2013 until August 2016, total of 740 people from 29 vessels had been returned to their country.<sup>75</sup> The decrease number of boats came into Australia during period of implementation then used as a reference by the Australian government on the success of this policy in overcoming IMAs. Australian government claimed that this policy has successfully reduced IMAs arrival rates by up to 80 percent since the first 4 months have been implemented<sup>76</sup>. For the Australian government,

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<sup>74</sup> Aulden Warbrooke, "*Australia's 'Pacific Solution': Issues for the Pacific Islands*", <https://www.onlinelibrary.wiley.com/doi/full/10.1002/app5.32#references-section>. Retrieved September 20, 2017

<sup>75</sup> Janet Phillips, "*Boat arrivals and boat 'turnbacks' in Australia since 1976: a quick guide to the statistics*", Social Policy Section, RESEARCH PAPER SERIES, 2016–17, p. 6

<sup>76</sup> "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-seeker-boat-arrivals-dropping/5201116> Retrieved June 7, 2015

this significant decrease is an evidence of the success of the OSB policy. However, what is the real impact of implementing this policy on asylum seekers and also Indonesia as a transit country by IMAs before heading to Australia?

### 4.3. Situation of IMAs After OSB

In July 2013 Tony Abbott made an agreement with the government of Nauru and PNG. Under the agreement, Nauru and PNG agreed to accept asylum seekers who came to Australia after July 2013 in their countries during the assessment process and resettlement<sup>77</sup>. Thus, after this agreement is implemented there will be no more immigrants by sea that can enter Australia. Apart from being sent to detention centers in Nauru and Manus Island in Papua New Guinea, the Australian government also stated that some of the migrants could return to their countries of their own volition.

Until now, whether or not the participating countries of the 1951 refugee convention may send refugees to third countries is still debated. The Australian Government in establishing this policy adheres to the concept of state sovereignty; as a sovereign State, Australia has its own rights to decide and make regulations. This is as stated in a book of guide to international refugee law, “it is one of the elements of State sovereignty that a country may decide if and how will permit non citizens to enter”.<sup>78</sup>

However, even though there is no obligation for sovereign states that have ratified the convention to receive asylum seekers directly in their territory but as stated by Sohail H Hashmi in *State Sovereignty: Change and Persistence in International Relations*; in the face of a humanitarian crisis, sovereignty should not be a barrier<sup>79</sup>. Therefore in this case includes involvement in dealing with asylum seekers. Basically, although Australia does not accommodate asylum seekers directly in the country, but as a ratifying country, it still has an obligation to ensure the safety of refugees and its responsibility to provide protection. Meanwhile, by placing refugees in third countries there is no guarantee and supervision directly from the Australian government.

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<sup>77</sup> Janet Phillips & Elibritt Karlsen, *Developments in Australian refugee law and policy*, Law and Bills Digest Section, Social Policy Section, 2012 to August 2013

<sup>78</sup> Jastram, Kate & Achiron, Marilyn, *REFUGEE PROTECTION : A Guide to International Refugee Law*, 2001, p.41

<sup>79</sup> Sohail H Hashmi, *State Sovereignty: Change and Persistence in International Relations*, Pennsylvania State University, 1997, p.3

Risk of violations of human rights towards asylum seekers due to the transfer to detentions in the third country becomes one of the major issues in handling IMAs in the terms of humanity. Placement in third countries tends to be a handover of responsibility in the issue of asylum seekers. Regarding this matter, the Australian Human Rights Commission has also stated :

“Australia also has obligations not to return people who face a real risk of violation of certain human rights under the ICCPR, the CAT and the CRC, and not to send people to third countries where they would face a real risk of violation of their human rights under these instruments.”<sup>80</sup>

#### 4.4. The impacts of policies to Australia

Australian government claims that the policy of OSB successfully reduces IMAs rate by 80 percent in the first 4 months of its implementation<sup>81</sup>. For the Australian government, this significant decrease is an evidence to the success of the ‘turn back boats’ operation. The following table is the number or IMAs who transferred since the operation ‘turn back boats’ (the number up to the last month before The Manus Regional Processing Centre closed on 31 October 2017) :

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

*Table 4.1. Source: Department of Immigration and Border Protection of Australia (<http://newsroom.border.gov.au>)*

Table above shows the total number of immigrants who are still trying to get into Australia after enactment of the OSB policy. From those numbers, it seems that Australian government policy does not totally erase immediately the intention of immigrants and asylum seekers to

<sup>80</sup> <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/asylum-seekers-and-refugees-guide>. Retrieved September 20, 2017

<sup>81</sup> 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-seeker-boat-arrivals-dropping/5201116>. Retrieved June 7, 2015

come to this country.

Nevertheless, it cannot be denied that there is a downward trend of the number of asylum seekers who come by boat during the implementation OSB. The next graph displays the number of asylum seekers arriving by boat in Australia since 2010 (before the implementation of OSB) up to the current year 2018.

Asylum seekers arriving by boat in Australia since 2010-18

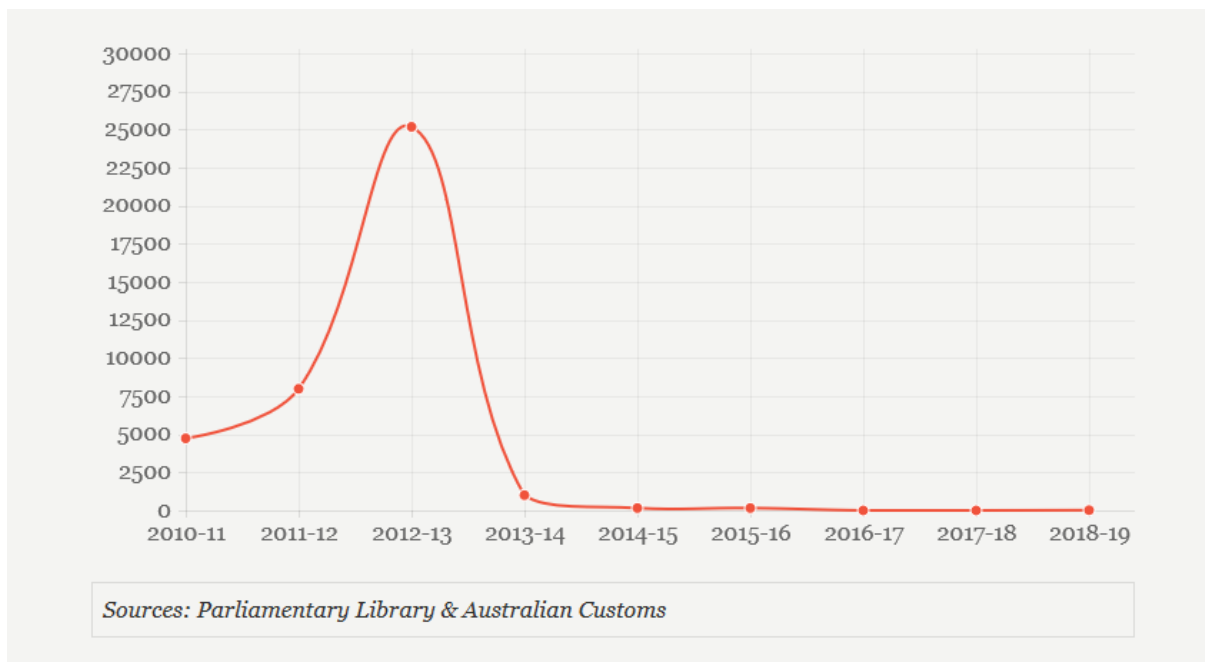


Chart 4.1. Source : *Asylum Insight*<sup>82</sup>

Chart above shows that the highest peak of the influx of boat people arriving in Australia occurred in 2012-13. Then it starts to decrease in 2013-2014, which is 2013 is the year when OSB policy began implemented by Australian government

Then how much funding is spent by Australia to run OSB operations? Based on report of UNICEF Australia and SAVE the Children, to implement the policy offshore processing, the Australian government spent \$400,000 per person, per year<sup>83</sup>. while for the operational cost of turn back boat policy for three years during July 2013 to July 2016 is estimated at

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<sup>82</sup> “Number of asylum seekers arriving by boat”, <https://www.asyluminsight.com/statistics/#.W-qLFWZoTIW>. Retrieved November 13, 2018

<sup>83</sup> 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

\$295 million<sup>84</sup>. This does not include cost of border enforcement that spent each year, also the assistance provided in the cooperation of marine security with other countries. This amount is quite large for the country's security budget. This budget also draws widespread criticism from the public because the nominal value will be very useful if it is allocated to help refugees. In addition, Australia is a main donor country for International Organization for Migration (IOM) in Indonesia<sup>85</sup>, which is also handling asylum seekers in this country.

#### **4.5. The impacts of Australian government's policies to asylum seekers**

OSB is a complex policy issue. In its implementation Australian government refuses those who come illegally and sends them to the detentions center outside of Australia. In regard to its operational, regarding the report of UNICEF Australia and SAVE the Children is not only about material costs. This policy also raises immaterial costs. Immaterially asylum seekers and refugees, especially children are the victims of this policy. However, there is a different background and culture between the asylum seekers and local communities in detentions center, this also can trigger conflict and the asylum seekers vulnerable to experience violence and intimidation. The effect on humanity experienced by IMAs as an impact of the implementation of OSB policy.

Save the Children reported that the children placed in detention centers in Nauru experienced violence and abuse that endangered their mental health<sup>86</sup>. The placement of asylum seekers in Nauru as the 3rd country also does not solve social problems. In fact, Australian government policies only move places where problems or social clashes occur. This is because according to Save the Children's report, children of asylum seekers often get inappropriate treatment from the local community<sup>87</sup>.

Moreover Amnesty International stated that placing refugees on Nauru violated international law on human rights. Some refugees reported to be victims of various acts of violence. According to Amnesty International, there has been a failure in providing a safe environment for refugees and serious violations of children's rights<sup>88</sup>. Regarding to children

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<sup>84</sup> *Ibid*, p. 48

<sup>85</sup> Interview with Dr. Tri Nuke Pudjiastuti, MA. Deputy Chairman for Social Sciences and Humanities of Indonesian Institute of Sciences, 8 January 2017

<sup>86</sup> 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.22

<sup>87</sup> *Ibid*, p.25

<sup>88</sup> "Amnesty International says Nauru refugee policy breaks international human rights laws"

in detention, there are provisions that regulate it in the Convention on the Rights of the Child (CRC). According to CRC article 37, put the children in detention only in short time.<sup>89</sup> The act of abandoning children in detention and not fulfilling their basic rights is an act of violating human rights.

Living in a detention means they have to survive in limited circumstances, can not work, even the children have no access to school. Above all of these, they have to stay in uncertainty period of time in detention center or shelter while waiting for the process of Refugee Status Determination (RSD). This is because there is no fixed period of time how long they have to wait since the application being submitted until they are determined as refugees or not. Even if UNHCR recognize their status as refugee there is no guarantee that they will get resettlement in a third country.<sup>90</sup>

As mentioned previously, as one of the countries that ratified refugee conventions actually Australia has obligation to protect refugees. Regardless each country has its own internal policy, refusal to resettle refugees in the country is against the spirit of the Convention and another form of violation of the principle non-refoulement. Furthermore, this is certainly not only limited to not returning them to a country where they are threatened of being persecuted (non-refoulement) but also when they have submitted application in seeking protection despite the detention located in third country.

The failure in handling asylum seekers and refugees such as not fulfilling their rights is a violation of the spirit of the Convention Relating to the Status of Refugees. Once again, it needs to be emphasized that, as a country that has ratified The 1951 Refugee Convention, Australia has obligation to give protection to refugees regardless how they have come to seek protection.

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<http://mobile.abc.net.au/news/2016-10-17/nauru-detention-policy-a-breach-of-human-rights-amnesty/7940652?pfmredir=sm>. Retrieved September 20, 2017

<sup>89</sup> “Australian Human Rights Commission”, <https://www.humanrights.gov.au/publications/last-resort-national-inquiry-children-immigration-detention/6-australias-immigration>. Retrieved November 7, 2018

<sup>90</sup> Interview with Isa Soemawidjaja, Assistant Protection Officer UNHCR Indonesia, November 2, 2018



## **CHAPTER 5**

### **The Circumstances Following the Implementation of OSB Policy**

The OSB policy not only results in large operational costs but also various problems as the impact of this policy towards asylum seekers. Regarding this matter, UNHCR has stated that the aim of The 1951 Refugee Convention is not to solve the problem of migration but to protect the refugee. Hence, it is the responsibility of countries to handle migrants while also fulfilling the obligation to protect refugees as mandated by the Convention.<sup>91</sup>

Several breaches committed during the implementation of the policy also considered to violate human rights and international common law. Furthermore, various social and bilateral problems between Indonesia and Australia also emerged following its implementation. The following are various social problems related to the policy.

#### **5.1. Asylum seekers stuck in Indonesia**

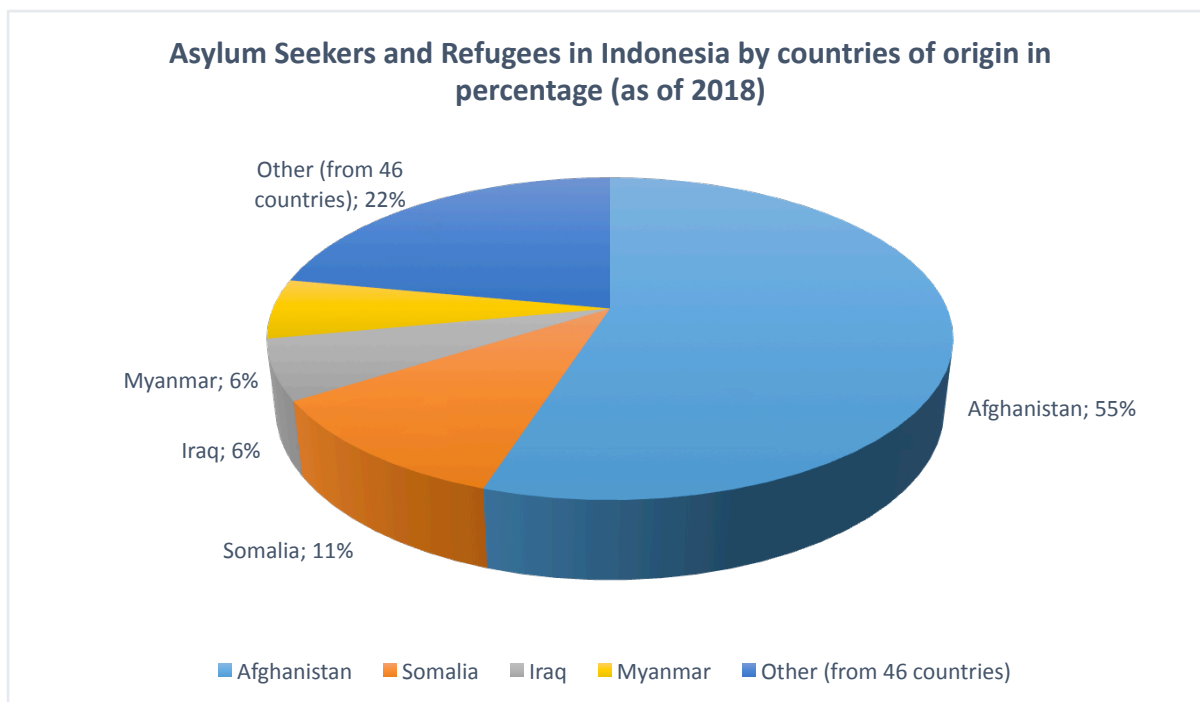
Regarding to the Australian government statement, the number of IMAs after OSB implementation decrease significantly. What happens actually during this policy implementation? Since Australia implements OSB, automatically the asylum seekers who cross the sea without legal documents can't come into this country anymore. Eventually, many of them who use Indonesia as a route to Australia getting stuck in the country.

Based on information from UNHCR office in Jakarta, as of September 2018 the number of asylum seekers in this country reached 13,800 people and 29 percent of them are children.<sup>92</sup> In addition, it is believed that there are still many of them who have not yet been registered. Not yet registered asylum seekers results in them being unable to access and obtain their rights as asylum seekers to get opportunity to be determined as refugee and get protection. The following is information about the percentage of asylum seekers in Indonesia by country of origin.

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<sup>91</sup> UNHCR, "Melindungi Pengungsi & Peran UNHCR", UNHCR Switzerland. 2007

<sup>92</sup> This data based on correspondence with Mitra Salima Suryono, Public Information Officer UNHCR Indonesia



*Chart 5.1. Asylum Seekers and Refugees in Indonesia by Countries of Origin in Percentage, Source: UNHCR Indonesia<sup>93</sup>*

Data above shows that majority of asylum seekers in Indonesia come from conflict countries. This information corresponding with the information from Department of Immigration and Border Protection (DIBP) Australia, about origin countries of majority asylum seekers and refugees in Australia, as elaborated in previous chapter. From this, it can be concluded that in fact, conflict in a country is the biggest trigger of immigration and asylum seekers. This can be the reference in deciding whether an asylum seeker is a genuine refugee or not, in addition to other important facts.

In fact many of the asylum seekers in Indonesia assumed if their asylum application as refugees approved by UNHCR then they will be resettled in Australia. Actually UNHCR has some long process before determining someone as a genuine refugee. Even after their status as refugees determined by UNHCR it does not mean that they will get resettlement in the third country. This is because, based on Convention Relating to the Status of Refugees, the rights of refugees is to seek asylum and get protection, and this cannot be interpreted as the right to get resettlement in the third country. Therefore, UNHCR offers a “Durable Solution” for those who have been determined as genuine refugees, and resettlement just as

<sup>93</sup> This chart is made based on information about the numbers of Asylum Seekers and Refugees that obtained from UNHCR Indonesia via correspondence

one of the solutions beside “local integration” and “voluntary repatriation” which is return to the country where they come from (this will be offered if the situation in the origin country of a refugee is getting better)<sup>94</sup>.

As an organization that handles refugees, UNHCR cannot force a country to take refugees, their function on this just to advocate them to the countries that have ratified Convention Relating to the Status of Refugees<sup>95</sup>. Those countries have prerogative rights whether they will approve them or not. Generally, those countries determine quota on annual basis but only few countries take a part in UNHCR resettlement program.

In an interview with Isa Soemawidjaja, Assistant Protection Officer UNHCR Indonesia, stated that the opportunity to get resettlement is very small, only 1 percent of the world's total refugees can be placed in third countries. such as developing their talents and abilities, through training / vocational activities. While, due to the opportunity to get resettlement is very small, then the most possible solution if voluntary rapatriation refused by refugees due to fear of persecution is “local integration” in the asylum country where they are living. This all means the number of asylum seekers who stuck in Indonesia will keep increase by time.

Basically, regarding to Isa Soemadidjaja, in determining refugee status there are two levels, when the an asylum seeker being rejected in the first time, then they can still submit an appeal within 30 days after the UNHCR's decision with new eviden. Further, UNHCR will review and conduct an assessment again. When the application has been rejected again or they do not file an appeal, they are no longer a concern of UNHCR, they are subject to the authority of the state where they are living and this state will determine the next policy toward them. It means, for those asylum seekers in Indonesia who have been rejected to get refugee status and they refuse repatriation, they will be under the laws in force in the country and Indonesian government is the part that will decide on this issue.

## **5.2. Bribery issue**

On 2015, Amnesty International revealed the involvement of Australian officials in bribery to the crews of boats who tried to get Australia from Indonesia. According to

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<sup>94</sup> Interview with Isa Soemawidjaja, Assistant Protection Officer UNHCR Indonesia, November 2, 2018

<sup>95</sup> *Ibid*

Amnesty International, they paid in order to ask those crews which were considered as people smuggler brought back those passengers to Indonesia.<sup>96</sup> Regarding this matter, Indonesian government also conducted investigation to prove the allegation that Australian officer paid US\$5,000 each to the captain and crews of a boat that heading to New Zealand and brought 65 asylum seekers from some countries.<sup>97</sup>

The Amnesty International claimed they had evidence regarding the transaction. Despite some of Australian public officials denied this, but the Australian Prime Minister at the time, Tony Abbott on some interviews with media has never officially denied the allegation of payments to people smugglers, and only emphasized the importance of overcoming immigrants who enter through people smuggler.

The act of bribing by Australian officials is not only an embarrassing scandal of Australian government officials but can also be considered as a form of involvement with international crime which in this case are people smuggling. This is contrary to Australia's commitment all this time in eradicating people smuggling. Moreover, the act of directing those boat to bring the asylum seekers back to Indonesian territorial waters violates the norm ethically in international relations between countries.

Based on all actions taken by the Australian government, it seems that the Australian government take unilateral actions to protect their national interests when they consider that Indonesian waters security guard unreliable in securing the waters from people smugglers who bring IMAs. The actions taken in handling boat people show that the Australian government is willing to do everything possible to prevent them from entering the country.

Various violations committed by Australia aroused protest from Indonesia. Nevertheless, from Indonesia side also admits that it is uneasy to keep Indonesian waters from the passing of people smuggling. In an interview given to Adviser to the Minister of Defense on International Affairs of Indonesia, Soemadi D.M. Brotodiningrat, said that Australia cannot blame Indonesia for the wave of migrants and those who claim as asylum seekers through Indonesian waters. Furthermore, Soemadi emphasized that the most urgent thing is to improve the system of the two countries in handling influx of asylum seekers,

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<sup>96</sup> <https://www.amnesty.org/en/latest/news/2015/10/australia-damning-evidence-of-officials-involvement-in-transnational-crime-uncovered/>. Retrieved August 13, 2017

<sup>97</sup> "Jakarta warns Australia over people smuggling 'bribery' claims", <https://www.theguardian.com/australia-news/2015/jun/15/jakarta-demands-bishop-retract-claim-indonesia-failing-to-secure-its-border>. Retrieved August 13, 2017

rather than blaming each other.<sup>98</sup>

### **5.3. Australia refuses to resettle refugees from Indonesia and plans a lifetime ban towards boat people**

On 2014, the situation of asylum seekers who came from Indonesia as a transit route back in tense. Not only refuses they who come by boat illegally, the Australian government, through its Immigration Minister Scott Morrison, announced that Australia no longer accept resettlement from they who come from Indonesia after 1 July 2014.<sup>99</sup> Previously, Australia has reduced the number of refugees per year they accepted from Indonesia<sup>100</sup>. However, this strategy as commonly called as a "drain the pool" is not a good solution and only aims to close the entrance to Australia through Indonesia. It cannot be neglected that this has an impact on Indonesia. This can be predicted to result in an increase in accumulation of asylum seekers in shelter and community houses in Indonesia, and those asylum seekers who wish to get resettlement in Australia are in uncertainty. In addition, this policy makes Australia's commitment to refugee conventions questionable.

Along with the implementation of the above policies, up to Australia's refusal for the resettlement of refugees coming from Indonesia, eventually it is confirmed that the number of those who stuck in Indonesia is increasing. This increase also has an impact on overcapacity in immigration detention house in Jakarta.<sup>101</sup> As a country that does not ratify The 1951 Refugee Convention, Indonesia has no facility for those asylum seekers. What the Indonesian government can do is put them at Immigration Detention House which is actually intended for ordinary immigrants who violate visa policies such as overstay, etc. Unfortunately, due to limited Immigration Detention House many of them living on the roadside in Jakarta, most of them come from Afghanistan, Somalia, Sudan, Ethiopia, Yemen and Bangladesh.<sup>102</sup>

The policy does not stop there, on October 2016 Australian government under Prime

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<sup>98</sup> Interview with Soemadi D.M. Brotodiningrat, Adviser to the Minister of Defense on International Affairs, about Indonesia-Australia relationship, March 9, 2018

<sup>99</sup> 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.34

<sup>100</sup> "Asylum seekers on the doorstep of United Nations office in Jakarta with nowhere to turn"  
<https://www.smh.com.au/world/asylum-seekers-on-the-doorstep-of-united-nations-office-in-jakarta-with-nowhere-to-turn-20141208-122d6q.html>. Retrieved March 12, 2018

<sup>101</sup> Interview with Dejan Micevski, Senior Programme Coordinator IOM Indonesia, June 19, 2018

<sup>102</sup> <https://www.aa.com.tr/en/pg/photo-gallery/refugees-who-survive-on-the-roadside-of-jakarta/0>. Retrieved June 21, 2018

Minister Malcolm Turnbull proposed a lifetime ban towards boat people. It means any of asylum seekers who try to reach this country by boat without legal documents and was sent to Nauru or Manus island will never be settled in Australia even if UNHCR determines them as genuine refugees . This policy applied to adults people who tried to reach Australian without visa since 19 July 2013.<sup>103</sup> Despite there is a widespread criticism regarding this policy and this could be considered as a violation to international law, the Australian government insist that this is their effort to stop people who come by boats and people smuggling activities.

However, this policy considered as a “shock therapy” to immigrants who try to enter Australian by crossing the sea and wish to be accepted as refugee in the country. Through this policy Australian government expected that the immigrants who come to seek refugee status in Australia will consider again before trying to get into country by boat without any legal documents. At the end, by implementing a lifetime ban towards boat people, Australian government wanted to reduce the number or even totally eliminate immigrants who claim as asylum seekers but come into country through the sea illegally and involve people smugglers. The next chart shows the statistic of asylum seekers in Indonesia from 2008 to 2017.

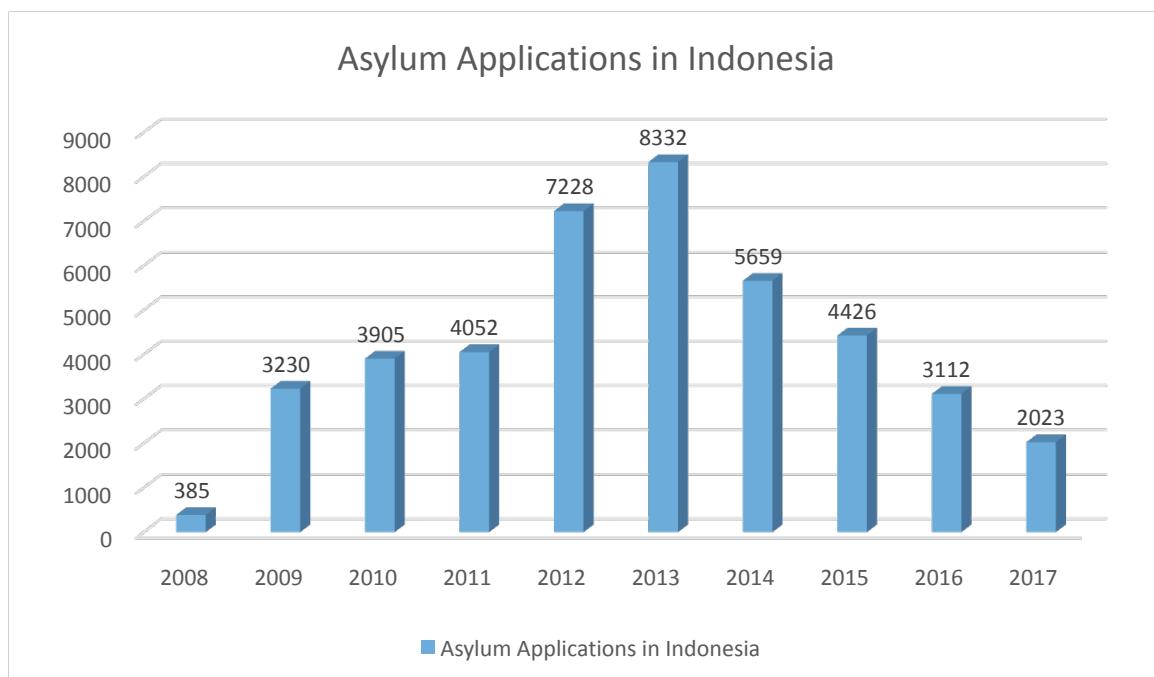


Chart 5.2. Asylum application in Indonesia from 2008 to 2017

Source: UNHCR Indonesia<sup>104</sup>

<sup>103</sup> <https://www.theguardian.com/australia-news/2016/oct/30/asylum-seekers-face-lifetime-ban-on-entering-australia-if-they-arrive-by-boat>. Retrieved November 10, 2018

<sup>104</sup> This chart is made based on information about the numbers of Asylum Seekers and Refugees that obtained

Chart above shows a sharp increase in the number of asylum applications to UNHCR in Indonesia in 2012 and continues to increase in 2013. The data shows a downward trend after 2013 when the OSB policy implemented by the Australian government. This data and information about the decrease number of asylum seekers in Indonesia in line with the decrease number in Australia after OSB policy implemented by Australian government.

#### **5.4. Indonesian government's in handling asylum seekers and refugees**

Regardless Indonesia is not a country that ratifies the convention, but this has a long history as a place for asylum seekers and refugees. This country often used as a transit place by immigrants and asylum seekers who want to go to Australia. Galang Island in Indonesia was a stopover for the Vietnamese refugees during the Vietnam war. This place become a camp for those refugees before heading to Australia.<sup>105</sup> In addition, various events such as natural disasters and riots make Indonesia has prior experience in handling domestic refugees.

Recent years, following the increase number of IMAs who heading to Australia, Indonesia is quite overwhelmed to handle boat people that cross various points in Indonesian waters. As one of the island countries with the longest coastline in the world, it is not an easy task for Indonesia to secure every point in its waters. This geographical condition makes it difficult for Indonesia and opens opportunities for people smugglers. Moreover, the number of security forces guarding Indonesian waters is very limited and unbalanced with the vast sea territory of Indonesia, also the equipment they have to guard the water area is still very limited.

In the journey to reach Australian territory, many of them stranded and stuck in Indonesia. Even though Indonesia is not a country that ratifies international conventions related to refugees but still cannot ignore this situation. Thus, this country has a moral obligation to be involved in handling asylum seekers in the country and implement the principle of non-refoulement as mandated by Convention.

Nevertheless, Indonesia has limited resources both in terms of human resources and

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from UNHCR Indonesia via correspondence

<sup>105</sup> Achmad Romsan, Usmadi. et al “Pengantar Hukum Pengungsi Internasional: Hukum Internasional dan Prinsip-prinsip Perlindungan Internasional”, UNHCR, Jakarta, 2003, p.20

funds in handling immigrants and asylum seekers who get stranded in the country. Likewise, in eradicating people smuggling. Neither the Indonesian government has special budget for this purpose. To date, the Indonesian government uses funds from the Ministry of Social Affairs and The National Zakat Board (BAZNAS) which is an independent non-structural government institutions. BAZNAS collects funds from donations of Indonesian Muslim community but this is just for particular occasions.<sup>106</sup>

Therefore, UNHCR and IOM are international organizations that play an important role in handling refugees in Indonesia. Due to Indonesian government does not have a particular budget for refugees during their time in shelter and community houses, then IOM is the organization bears the cost.<sup>107</sup> Technically, asylum seekers who are stuck in Indonesia and need assistance will be reported by the immigration authorities to IOM, which then acts as an international organization that handles these asylum seekers.

### **5.5. Indonesian policies and laws related to immigrants / refugees**

As mentioned earlier, Indonesia has not ratified The 1951 Refugee Convention and its 1967 Protocol, besides until 2016 there was no law particularly regulating refugees and asylum seekers. That means there were no legislation that regulates and handles comprehensively the asylum seekers and refugees in Indonesia. Even further, Indonesia also had no definition of refugee. Due to the absence of laws that regulate asylum seekers and refugees, then in handling they are categorized as ordinary immigrants.<sup>108</sup> The law that regulates the legal status of asylum seekers and refugees prior to the issuance of the Presidential Regulation in 2016, is the immigration law on human smuggling. Therefore, the asylum seekers (boat people) who stranded in Indonesia were considered in the category of victims of people smuggling.

This resulted in the position of asylum seekers and refugees being weak in legal protection in Indonesia, even they are vulnerable to becoming victims of human rights violations. The absence of a particular law governing the asylum seekers and refugees has resulted in the handling of asylum seekers and refugees often by incidental. This results in a

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<sup>106</sup> Interview with Dr. Tri Nuke Pudjiastuti, MA. Deputy Chairman for Social Sciences and Humanities of Indonesian Institute of Sciences, 8 January 2017

<sup>107</sup> Interview with Dejan Micevski, Senior Programme Coordinator IOM Indonesia, June 19, 2018

<sup>108</sup> Interview with Dr. Tri Nuke Pudjiastuti, MA. Deputy Chairman for Social Sciences and Humanities of Indonesian Institute of Sciences, 8 January 2017



non-systematic handling that leads directly to the subject matter.

In interview, Dr. Tri Nuke Pudjiastuti, MA., Deputy Chairman for Social Sciences and Humanities of Indonesian Institute of Sciences, explains that at the moment the Non-Governmental Organization (NGO) that involved in Indonesia in helping the asylum seekers and refugees is the Jesuit Refugee Service Indonesia (JRS). This organization has worked actively in Indonesia since 2009 to provide advocacy and assisting for the psychological problems of refugees.<sup>109</sup> JRS Indonesia opens services for refugees in several regions in Indonesia. So far, this is one of the NGOs that is consistent in providing assistance to asylum seekers and refugees.

Following the increasingly urgent handling of refugees entering Indonesian jurisdiction, in December 2016 the Indonesian government issued regulations through the Presidential Decree 125/2016. The decree regulates the handling of refugees from abroad, especially those who come by sea. This regulation also covers voluntary repatriation of refugees to their home countries. Although the decree does not contain the detail protection to refugees, at least through this decree Indonesian government shows their comitment. Moreover, this Presidential Decree can be a basis in handling asylum seekers and refugees.

Meanwhile, back to the guidelines for handling refugees, even though Indonesia has not ratified international refugee conventions, the principle of non-refoulement is considered as a Customary International Law. Then this principle binds all countries without exception, regardless of whether they have ratified the Refugee Convention or Protocol or not.<sup>110</sup> With this international provision, coupled with Australian policy, it can be ascertained that the number of asylum seekers are stuck in Indonesia will be increased.

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<sup>109</sup> The detail information about Jesuit Refugee Service Indonesia and its activities can be find on the website <https://jrs.or.id/>

<sup>110</sup> Jastram, Kate & Achiron, Marilyn, REFUGEE PROTECTION : A Guide to International Refugee Law, 2001, pp.106

## CHAPTER 6

### A Violation To The Sovereignty of Indonesian Territorial Waters

As explained in the previous chapter, the OSB policy has resulted in the emergence of various issues between Indonesia and Australia. Generally, most of the ships entering Australian waters and transporting IMAs come from Indonesia, which is located adjacent to Australia. As a consequence of the policy of OSB, the Australian Navy push them back to Indonesian territorial waters. On the other hand, Indonesian government since the beginning has stated that never agreed to Australia's OSB policy. In implementing OSB policy, Australian Navy also pushes boats to return to Indonesian waters, therefore this policy is often called as 'turn back boats policy'. This policy itself has been criticized by the international community because it is considered a rejection to the arrival of asylum seekers.

Nevertheless, during the operation Australian naval vessels had entered Indonesian territorial waters in order to push the boats. This is certainly not justified and considered humiliation to a sovereign state. Moreover, this action breaches Indonesian territorial. Recorded between December 2013-January 2014 Australian Navy had entered Indonesian territories for six times<sup>111</sup>. This violation is certainly opposed by the Indonesian government because disturbing territorial integrity and sovereignty of Indonesia as a nation.

The incident of Australian Navy entered to Indonesian territorial waters during its operational in implementing of OSB policy is not only violate to International law regarding sovereignty of a country, but also against the principals of The 1951 Refugee Convention. According to the Convention, when a country accede Convention Relating to the Status of Refugees, then that country is expected to assist in avoiding conflicts between countries regarding the regulation of refugees<sup>112</sup>. This is mainly because giving asylum is an act of peaceful and humanitarian not a threatening act, hence, peaceful means are needed.

Furthermore, the entry of the Australian Navy into Indonesian waters is a violation of national borders and a state's sovereignty as stated in the United Nations Convention on the

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<sup>111</sup> "Australian vessels 'unintentionally' entered Indonesian waters six times", <https://www.theguardian.com/world/2014/feb/19/australian-vessels-unintentionally-entered-indonesian-waters-six-times>. Retrieved September 15, 2017

<sup>112</sup> UNHCR, "Konvensi 1951 Tentang Status Pengungsi dan Protokol 1967", 2011, p.7

Law of the Sea (UNCLOS). The UNCLOS or commonly called as Law of the Sea Convention not only defines the rights and responsibilities of nations to the oceans and manages the natural resources of the sea, but also sets the boundaries of the country. This is the basis of a country's sovereignty over its territorial waters.

### **6.1. State borders according to UNCLOS**

UNCLOS section 3 about innocent passage in the territorial sea, Article 17 (Right of innocent passage) mentions that :

“Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea”. But however, sebagaimana penjelasan pada Article 18 (Meaning of passage), “this passage through the territorial sea for the purpose of traversing that sea without entering internal waters”.<sup>113</sup>

As agreed in international law, the country's territory consists of three dimensions, namely, land, sea and air. Provisions regarding territorial sea are also stated in Geneva Conventions on the Law of the Sea on 1958 and United Nations Convention on the Law of the Sea (UNCLOS) 1982. Moreover, Indonesia has ratified UNCLOS 1982. As a reference about the borders of state sovereignty and the right to pass through the waters, the following are related articles from UNCLOS 1982 which came into force on November 16, 1994:

#### Section 1. General Provisions

##### *Article 2*

##### *Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil*

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

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<sup>113</sup> [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf), Retrieved March 1, 2018

## Section 2. Limits of the Territorial Sea

### *Article 3*

#### *Breadth of the territorial sea*

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

### *Article 4*

#### *Outer limit of the territorial sea*

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

## Section 3. Innocent Passage in the Territorial Sea

### Subsection A. Rules Applicable To All Ships

#### *Article 17*

#### *Right of innocent passage*

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

#### *Article 19*

#### *Meaning of innocent passage*

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.
2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:
  - (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
  - (b) any exercise or practice with weapons of any kind;
  - (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
  - (d) any act of propaganda aimed at affecting the defence or security of the coastal

State;

- (e) the launching, landing or taking on board of any aircraft;
- (f) the launching, landing or taking on board of any military device;
- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- (h) any act of wilful and serious pollution contrary to this Convention;
- (i) any fishing activities;
- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage.<sup>114</sup>

Subsection B. Rules Applicable to Merchant Ships and Government Ship  
Operated for Commercial Purposes

*Article 27*  
*Criminal jurisdiction on board a foreign ship*

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

- (a) if the consequences of the crime extend to the coastal State;
- (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
- (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
- (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

Part IV Archipelagic States

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<sup>114</sup> United Nations Convention on the Law of the Sea,  
[http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf), accessed December 8, 2017

## Article 47 (6)

If a part of the archipelagic waters of an archipelagic States lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter States has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.<sup>115</sup>

As mentioned above, each sovereign country has rights to its territory consisting of land, sea and air and to exercise its authority in the region.. Basically, referring to the convention of UNCLOS section 3 Article 17, each ship heading for the high seas through the territorial sea has the right to pass peacefully (*innocent passage*). Nevertheless, all of this refers to reasonable passage without any specific intent which is detrimental to the country they are going through, or have an impact on the security of the country especially if it involves the navy to enter the territorial waters of other countries. This is not only breaking norms and ethics in international relations, but also can be categorized as violating and provoking actions in neighboring relations. Even when a country's military fleet is pursuing a ship, they will stop when the ship has entered the territory of another country.<sup>116</sup> All of this is a form of respect to the sovereignty of other countries, also an ethic in international relations.

Therefore, when the violation occurs, Indonesia as a sovereign country deserves to question Australia's actions. Meanwhile, if referring to international law, violations committed by Australia are serious violations. It cannot be denied that the violation of the territorial sovereignty of a country is contrary to the ethics and basic principles of mutual respect for state sovereignty within the scope of a country's territory.

### **6.2. Australia-Indonesia Agreement (Lombok Treaty 2006)**

The incident of the Australian navy entered into Indonesian territorial waters not only violates UNCLOS but also the agreement between both countries in The Lombok Treaty on 13 November 2006. The sovereignty and mutual respect of both countries are emphasized several times in the agreement. The principle of mutual respect for state sovereignty is also mentioned in the preamble paragraphs of this agreement :

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<sup>115</sup> *Ibid*

<sup>116</sup> Syamsumar Dam, *Kedaulatan Negara dan Hukum Laut Internasional*, Nasion Volume 6 No.1 tahun 2009 p.49

Reaffirming the commitment to the sovereignty, unity, independence and territorial integrity of both Parties, and the importance of the principles of good neighbourliness and non-interference in the internal affairs of one another, consistent with the Charter of the United Nations.<sup>117</sup>

Furthermore, this subject matter also mentioned on the agreement on the Framework for Security Cooperation in Article 2 as stated that :

In their relations with one another, the Parties shall be guided by the following fundamental principles, consistent with the Charter of the United Nations.

- (1) Equality, mutual benefit and recognition of enduring interests each Party has in the stability, security and prosperity of the other;
- (2) Mutual respect and support for the sovereignty, territorial integrity, national unity and political independence of each other, and also non-interference in the internal affairs of one another<sup>118</sup>

Referring to the rules of international law and bilateral agreement above, the Australian Navy in carrying out its operations has committed a violation. The Australian side also acknowledged this violation and through the Foreign Minister Julie Bishop had expressed a regretful regarding the violation. The apology delivered through the Australian embassy in Jakarta.<sup>119</sup> The Australian government claimed that the violation on Indonesian territorial waters was unintentionally. However this violation raises questions, how could the navy equipped with equipment and trained in determining coordinate points and regional boundaries make this mistake?. If this is an accident how could this happen repeatedly? If there is an intentional act, then this is clearly as a violation of law, principles and international norms to respect each other's territorial boundaries for a sovereign country.

### **6.3. Territory of the country according to Indonesian law**

Indonesia has a long history in interpreting and achieving sovereignty. As a country

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<sup>117</sup> This preambular of agreement stated on the web of Australian Government Department of Foreign Affairs, details on the link <http://www.austlii.edu.au/au/other/dfat/treaties/2008/3.html>. Retrieved November 11, 2018

<sup>118</sup> "Agreement Between the Republic of Indonesia and Australia on the Framework for Security Cooperation", <https://dfat.gov.au/geo/indonesia/Pages/agreement-between-the-republic-of-indonesia-and-australia-on-the-framework-for-security-cooperation.aspx> (in the section Lombok Treaty). Retrieved November 11, 2018

<sup>119</sup> "Serobot Teritori RI, Australia Minta Maaf", [http://www.republika.co.id/amp\\_version/mzjbu2](http://www.republika.co.id/amp_version/mzjbu2). Retrieved December 8, 2017

that has experienced colonialism, Indonesia has a high respect toward sovereignty of a country, especially sovereignty of territory. This due to territory is one of the absolute conditions for the establishment of a state. Therefore every country has full rights and sovereignty over its territory. The importance of the territory of the sateted as mentioned in article 1 of Montevideo Convention on Rights and Duties of States below:

The state as a person of international law should possess the following qualifications:

- (a) a permanent population;
- (b) a defined territory;
- (c) government; and
- (d) capacity to enter into relations with the other states.<sup>120</sup>

After becoming an independent country in 17 August 1945, Indonesia has full rights and authority over its territory, as stated in the Law of The Republic of Indonesia Number 43 of 2008. Despite this isn't a particular law of State sovereignty of Indonesia, but it contains the law concerning the State Territory. Apart from referring to international law which regulates legal provisions between countries, Indonesia also has its own law regarding to border of territory and maritime area. Based on the Indonesian law, the state territory is regulated in the Law of The Republic of Indonesia Number 43 of 2008, as stated in follows :

## CHAPTER I GENERAL PROVISIONS Article 1

In this Law, unless the context requires otherwise:

1. Territory of the Republic of Indonesia, hereinafter referred to as Territory of Indonesia, is one of the elements of the land, inland waters, archipelagic waters and territorial sea along with the seabed and the soil beneath it, including all sources of wealth contained in it.
2. Territorial waters are inland waters, archipelagic waters, and territorial seas
3. Jurisdiction area is the area outside of the State Territory which consist of the Exclusive Economic Zone, Continental Shelf, and Additional Zone where the state has sovereign rights and other certain authorities as stipulated in legislation and international law.

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<sup>120</sup> Montevideo Convention on Rights and Duties of States signed on 26 December 1933 and became effective since 26 December 1934. The details about the Covention can be find in <https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf>



4. Territorial boundary of the state is a boundary line which is a separator of sovereignty of a country based on international law.

CHAPTER III  
SCOPE OF STATE TERRITORY

Part One  
General  
Article 4

The territory of the State includes land area, territorial waters, seabed, the soil beneath it and the air space above it, including all sources of wealth contained in it.

Part Two  
Border of territory  
Article 5

State border on the land territory, waters, seabed and the soil beneath it, also the air space above it, shall be determined on the basis of bilateral and / or trilateral agreements regarding land boundaries, sea boundaries and air boundaries, also based on laws and regulations and international law.

CHAPTER IV  
SOVEREIGN RIGHTS

Part One  
General  
Article 7

The Indonesian state has sovereign rights and other rights in jurisdiction territories whose the implementation is in accordance with the provisions of laws and international law.<sup>121</sup>

In this national law, articles on sovereignty are in line and strengthen the articles contained in international law. The articles above affirm parts of the territory and sovereignty of Indonesia. Also, its meaning and definition in accordance with international law. Therefore both of these laws, national and international law, reinforce each other. Moreover, those articles also confirm the bilateral agreement related to the border between countries. As mentioned above, Indonesia has bilateral agreement with Australia regarding sovereignty and territorial integrity.

Moreover, Indonesia also has another law on maritime namely the Law of The Republic of Indonesia Number 32 of 2014. In this law some articles confirm its sovereignty

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<sup>121</sup> The details about this law can be find in appendix with the title “Undang-undang Republik Indonesia Nomor 43 Tahun 2008 Tentang Wilayah Negara” in original language, or directly to the link of The People's Representative Council of Indonesia [http://dpr.go.id/dokblog/dokumen/F\\_20150616\\_1906.pdf](http://dpr.go.id/dokblog/dokumen/F_20150616_1906.pdf)

and borderline as follows.

## CHAPTER IV

### Sea Territory

#### Part One

#### General

#### Article 5

(1) Indonesia is an entire archipelago consists of islands and includes large and small islands which is a territorial entity, political, economic, socio-cultural, and historical, and the boundaries of its territory are drawn from the baseline of the islands.

(2) Indonesia's sovereignty as an archipelagic state covers land, inland waters, archipelagic waters, and territorial seas, including the airspace above it and the seabed and the and the soil beneath it, including natural resources contained in it.

(3) Indonesian sovereignty as referred to act (2) is subject to the provisions of legislation, the United Nations Convention on the Law of the Sea in 1982, and related international law

#### Article 7

(1) Territorial waters as referred to in article 6 Clause (1) cover:

- a. inland waters;
- b. archipelagic waters; and
- c. territorial sea.

(2) Jurisdiction area as referred to in article 6 Clause (1) cover:

- a. Additional Zone;
- b. The Indonesian Exclusive Economic Zone;
- c. Continental Shelf.

(3) The Republic of Indonesia has:

- a. sovereignty in inland waters, islands waters, and territorial sea;
- b. certain jurisdictions in the Additional Zone; and
- c. sovereign rights to the Exclusive Economic Zone and Continental Shelf.

(4) Sovereignty, certain jurisdiction, and sovereign rights in the territorial waters and jurisdiction as referred to in act (3) are carried out based on the provisions of laws and

international law.<sup>122</sup>

The Law of The Republic of Indonesia Number 43 of 2008 and Number 32 of 2014 above, point clearly the areas belong to Indonesian territory. Thus all parts of the territory of Indonesia are under the absolute sovereignty of Indonesia. Therefore, in these laws also include information about territorial sovereignty of Indonesia. Moreover, in some articles of both laws emphasize that Indonesia has sovereignty over its territory.

Indonesian regulations for state territory boundaries are intended to provide legal certainty regarding the scope of the country's territory, the authority to manage the State Territory, and sovereign rights. In establishing this law the Indonesian government is committed that the management of the Indonesian territory is aimed at welfare, sustainability and security. While, the concept of the archipelago state was first proposed on 1958 in Geneva, in the The United Nations Convention on the Law of the Sea. This is inseparable from the fact that Indonesia consists of thousands of islands.

In addition, the Indonesian government considers the importance of this law due to the strategic position of the border region in terms of state sovereignty, territorial integrity and law enforcement. Overall, the Law of The Republic of Indonesia Number 43 of 2008 contains prohibitions and sanctions for every person who commits a violation related to the territory of the country and its boundaries.

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<sup>122</sup> The details about this law can be find in the web of Ministry of Maritime Affairs and Fisheries on this link: <http://bpsplpadang.kkp.go.id/pubs/uploads/files/UU-2014-32%20tentang%20Kelautan.pdf>

## CHAPTER 7

### Applying Operation Sovereign Borders Policy in Europe

This chapter will analyze and examine the application of similar OSB policy in Europe. Although it is not directly related to the main topic of this research, but with consideration that this point can be used as a comparison to find out how the some policy would effect when applied to other countries. Therefore, some of parts elaborate the evolution of Australian government policies toward asylum seekers and refugees. Through a comparison of implementation the similar policy in two different regions, there will be lessons to be learned in handling this humanitarian issue.

#### 7.1. The implementation of *turn back boats* policy in Australia and Refugee Crisis in Europe

Australia has been implementing policy “turning back boats” since September 18, 2013<sup>123</sup>. 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 increase number of ‘Irregular Maritime Arrivals’ (IMAs) or commonly called as ‘boat people’ to this country<sup>124</sup>. Australian government claims that this policy successfully reduces IMAs rate by 80 percent in the first 4 months of its implementation<sup>125</sup>. For the Australian government, this significant decrease is an evidence to 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 to implement similar policy following the refugee crisis in Europe since 2015.

Related to refugee crisis (also commonly called as migrant crisis), the large number of migrants entering European countries through the Mediterranean Sea prompted the government in the region to look for solution. Through resolution on April 28, 2015, the

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<sup>123</sup> *Operation Sovereign Borders-The first six months*, <http://www.abc.net.au/news/2014-03-26/operation-sovereign-borders-the-first-6-months/5734458>. Retrieved June 7, 2015

<sup>124</sup> PHILLIPS, J. and SPINKS, H., “Boat arrivals in Australia since 1976”, *Parliament of Australia, Department of Parliamentary Services, Parliamentary Library*, (2013), p. 4

<sup>125</sup> 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-seeker-boat-arrivals-dropping/5201116>, accessed June 7, 2015

European Parliament agreed to jointly address the refugee crisis in the region. European Union (EU) countries agreed to share responsibility of the allocation of refugees in Italy and Greece to other member countries.<sup>126</sup> But this agreement did not go as planned until finally Italy proposed a change of EU asylum procedures by blocking ship that bring migrants heading to Italy.<sup>127</sup>

The question is: 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 is different. As mentioned in previous chapter that Australia is one of the destination countries of immigrants who come by sea and generally claim as asylum seekers, however the number of them is smaller compared to those who come to Europe.

Moreover, this chapter also examines how the situation faced by migrants after the implementation turn away boats 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.

## **7.2. The Changes of Australian Government Policy on Asylum Seekers**

Some of existing researches has examined various policies that implemented by 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 couple of times. On “*The Evolution of the Temporary Protection Visa Regime in Australia*”, Fethi Mansouri and Michael Leach describe changes in Australian government policies to obtain visa for them.<sup>128</sup>

In 2001, the policy of granting visas to asylum seekers off shore was under the

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<sup>126</sup> 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

<sup>127</sup> “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>. Retrieved June 6, 2017

<sup>128</sup> Fethi Mansouri and Michael Leach in this book elaborate about Australian government policy in granting visas to refugees since the Temporary Protection Visa (TPV) regime was formally introduced in October 1999 under Howard administration. This also explains the various changes to the Act on granting temporary visas to refugees. All of this followed a change in policy towards refugees especially IMAs by Australian government later.

provision of *Pacific Solution*<sup>129</sup>. Moreover, the asylum seekers who coming without visa would be considered as no meet the requirements unless they get ministerial discretion<sup>130</sup>. 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 Australia<sup>131</sup>.

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 from them by provide vessel. The Australian Government has set various regulations on the asylum seekers. In addition, the Australian government also sets various requirements and criteria to meet the status of refugees<sup>132</sup>.

‘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 detention center in Nauru and PNG states only for short-term whilst waiting for processing of claim, while in the Abbott period it is a long-term settlement. Moreover, there is uncertainty of waiting time to get settlement after they status as refugees granted by UNHCR.

To answer the question whether this similar policy in Australia suitable to be implemented in Europe too, firstly, is important to review how the Australian government implements its policy. Then, 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. So far, there hasn't been any specifically research discusses about 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 chapter is to examine the impact of Australian policy on blocking immigrant vessels after this policy began implemented in 2013. This part is expected to answer the question of whether this policy suitable in Europe especially on the route Mediterranean Sea.

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<sup>129</sup> Fethi, M. and Michael, L., "The Evolution of the Temporary Protection Visa Regime in Australia", *International Migration*, Vol. 47 (2) (2009), p. 107

<sup>130</sup> *Ibid.*, p. 108

<sup>131</sup> *Ibid.*, p. 112

<sup>132</sup> STEVENS, C. A., "Asylum Seeking in Australia", *IMR*, Volume 36 Number 3 (2002), p. 865

### 7.3. From ‘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 such as tightening surveillance in its territorial waters and blocking ships entering it. Under the government John Howard, Australia started ‘Pacific Solution’ policy on 2001. This policy imposed by the Australian government towards migrants who come through the sea route without valid documents. Pacific Solution is an effort to maintain Australia's sovereignty and security through strengthening its waters border control<sup>133</sup>. Pacific Solution is the Australian government's way of preventing immigrants claiming as asylum seekers to enter the Australian mainland while awaiting their asylum filing process. Through Pacific Solution, the Australian government has the authority to expel ships from their territorial waters<sup>134</sup>. Moreover, Australia has its own interpretation on the Refugee Convention and its international obligations in offering protection.

Furthermore, Australian also started implementing “enhanced screening process” on 2012. This practice conducted by officials of Department of Immigration of Australia and actually this is a very brief on-board assessment to the IMAs.<sup>135</sup> This short screening of the IMAs commonly known as an Australian government simply effort to fulfill its responsibility on “non-refoulement” towards refugee. The result of this screening will be use as a reference by 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 determination refugee status and some others more will be offered to return to their home country “at their own discretion”.

The above practice is implemented by Australian government 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 obligation to take refugees and not to return them to their origin countries<sup>136</sup> once they meet the criterias as refugees and their status granted by UNHCR. Therefore, it cannot be refused that as long as UNHCR has not determine yet whether their status as a genuine refugee or not, then they are in the protection

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<sup>133</sup> 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

<sup>134</sup> DONEGAN, L. R. W., “A Just and Sustainable Solution to the Boat People Predicament in Australia?”, *Honors Theses*, Paper 233, (2015), p. 8

<sup>135</sup> *Ibid.*, p. 23

<sup>136</sup> STEVENS, C. A., “Asylum Seeking in Australia”, *IMR*, Volume 36 Number 3 (2002), p. 864

of the convention and the country in which they are situated shall protect them and apply non-refoulement until their status is determined.

On the contrary, in its implementation Australia makes domestic policies to repel wave of refugees who come without legal document by doesn't let them enter onto Australian soil. These policies are especially for those who come by boats which the number is keep increasing especially from the most conflicted countries. In this regard, Australia utilizes its 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 raises in the general election in Australia. This has subsequently influenced Australia's party and parliamentary policies. This is as how the "turning back boats" policy submitted by Tony Abbott to the Australian parliament right before he was appointed as a Prime Minister.

Nevertheless, referring to the provisions of the international convention then this policy is contradictory to principle of protection to refugees. This because refer to situation that faced by IMAs that forces them to flee from their own countries and enter into another country through off shore without visas to get asylum could be considered as in urgent situation.<sup>137</sup> In reality not all of refugees can prepare visas and documents before heading to the destination country to get asylum. It can be understood due to the situation they face and there is no choice but to flee from their country to avoid persecution, therefore it is not easy to prepare all documents first.

Furthermore, there are rules in the international convention article 31 Convention Relating to the Status of Refugees, which states that refugees cannot be punished for illegally entering certain countries. Moreover, the countries that have ratified the convention shall not impose restrictions on the movements of them as detailed in article 31 of the Convention. These rules are effort to provide protection and freedom of movement for refugees. Therefore, despite Australia has its own interpretation of international obligations to offer protection, but the act of evicting the IMAs who claim to be asylum seekers without providing protection

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<sup>137</sup> O'DOHERTY, K. and LECOUTEUR, A., "Asylum seekers", "boat people" and "illegal immigrants": Social categorisation in the media, *Australian Journal of Psychology*, Vol.59, No.1 May (2007), p. 3



and assistance can certainly be considered contrary to the Convention. UNHCR encourages countries to carry out appropriate procedures in determining whether a person is a refugee or not. Furthermore, UNHCR also encourages the creation of regulations of national legislation on refugees based on international standards. This is expected to help and strengthen protection to the refugees. In addition, national law is expected to fill the areas not regulated by refugee conventions, such as in procedures for determining refugee status.<sup>138</sup>

As mentioned previously, the Pacific Solution policy under Howard administration in 2001 was reapplied by Tony Abbott in 2013.<sup>139</sup> This policy then continued through OSB program by turning back boats in its operation. Basically, 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 the stricter implementation towards asylum seekers since the IMAs who come by boat without visas have no chance to get resettlement in Australia despite they are consider as genuine refugees. Furthermore, the Australian Government declares that one of the criterias of the vessel to be included in the provisions to push out by the Australian navy is ships with Indonesian flag and crews entering Australian territorial waters illegally.<sup>140</sup>

Moreover, in line with the implementation of OSB, Tony Abbott as Prime Minister asserted that they will not accept neither those who come illegally into Australia nor those who entry through the people smugglers. This came into effect after Kevin Rudd the previous Australian Prime Minister, on June 2013 made an agreement with the Nauru and PNG governments to locate asylum seekers arriving after July 2013, during the assessment process and resettlement in both countries.<sup>141</sup>

#### **7.4. The problems faced by Australian government after the implementation of 'turn back boats' policy since 2013**

The problems arise after the implementation of OSB already stated in previous

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<sup>138</sup> Jastram, Kate & Achiron, Marilyn, REFUGEE PROTECTION : A Guide to International Refugee Law, 2001, p.18

<sup>139</sup> The boat turnback 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

<sup>140</sup> 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

<sup>141</sup> *Ibid*, p. 15

chapter. Nevertheless, in this chapter the details will be elaborated. 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 IMAs come from Indonesia, which is located adjacent to Australia. On the other hand, Indonesia, from the outset has stated never to agree the 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 in order to push the boats. This is considered as a breach to to Indonesian territorial. Reported that between December 2013-January 2014 Australian Navy had entered Indonesian territories for six times<sup>142</sup>. This violation certainly opposed by the Indonesian government because disturbing territorial integrity and sovereignty as a nation.

2. Intercepting and detained the vessel of asylum seekers at the sea is a part of implementation Australian government policies. Related to this practice Australian government faces lawsuit after the authorities detaining 157 Sri Lankan asylum seekers at sea. These asylum seekers were intercepted on June 2014<sup>143</sup>. 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 United Nations as the asylum seekers were fleeing their country regarding 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 law<sup>144</sup>.

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<sup>142</sup> “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

<sup>143</sup> “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>. Retrieved July 21, 2018

<sup>144</sup> 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>. Retrieved July 21, 2018

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, these asylum seekers are sent to Nauru and Manus island to be placed on the immigration detentions of both countries. 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 rights<sup>145</sup>. 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 2017<sup>146</sup>.
  
4. Violations of the rights of refugees also often involve local communities where detentions are located. UNICEF and Save the Children also noted a number of abuse, bullying 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 Refugee Convention in Australia and Papua New Guinea, the finding were mostly negative<sup>147</sup>.
  
5. Amnesty International reported its investigation that in May 2015, Australian government officials paid Indonesian boat crews to bring back the asylum seekers to Indonesia<sup>148</sup>. 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, international human rights law and considers this as a transnational crime<sup>149</sup>. Moreover, this not only breaches

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<sup>145</sup> “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>. Retrieved September 20, 2017

<sup>146</sup> “Why is the Manus detention centre being closed?”, <https://www.aljazeera.com/news/2017/10/manus-detention-centre-closed-171024212852806.html>. Retrieved July 17, 2018

<sup>147</sup> Warbrooke, A., “Australia’s ‘Pacific Solution’: Issues for the Pacific Islands”, *Asia & the Pacific Policy Studies*, vol. 1, no. 2, (2014), p. 340

<sup>148</sup> Amnesty International Report, “By hook or by crook Australia’s abuse of asylum-seekers at sea”, Index: ASA 12/2576/2015, (2015), p. 14

<sup>149</sup> *Ibid*, p. 6

international law but also can lead to the destruction of bilateral relations and crisis of trust between Indonesia and Australia.

As mentioned earlier that as a country ratifying the international convention relating to refugees Australia is obliged to comply with the agreement on the protection of refugees and even the asylum seekers. The policy of 'turning back boats' is vulnerable to 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 legal basis of note on non-refoulement UNHCR that stated in 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”<sup>150</sup>.

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 such as in violation of the territory sovereignty of another country, failure in complying with international conventions towards the basic rights of refugees. If in Australia alone there has been many violations in its implementation then what if this policy is adopted by countries in the European region? In general, the conditions and challenges faced by Australia compared to Europe in addressing IMAs are not entirely the same, the destination country also various. Hence, the next descriptions and arguments try to answer this question.

## **7.5. The 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

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<sup>150</sup> The Refugee Convention, 1951, <http://www.unhcr.org/4ca34be29.pdf>, p. 233, Retrieved July 22, 2018

increase more than doubled compared to years previously.<sup>151</sup> 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 mostly immigrants from countries with unsafe category do not register to get protection in a country with safe category once they are arrived after fleeing from their country but prefer to go to another country where they want to register.<sup>152</sup>

Following the wave of immigrant arrivals, countries in Europe begin to implement various policies. Western Balkans route is one of the routes traversed by immigrants, European countries began to tighten the guard in this area. This route finally closed on March 2016 as one of the European governments policies on this issue. Furthermore, on 2016 Italy recorded its highest number of arrivals with number topping 182.000.<sup>153</sup> Based on UN's agency information, since mid 2014 till beginning of July 2017 more than 500.000 migrants have passed through Italian port, while through the sea since the beginning 2017 up to mid year the number reaches 83,650 immigrants (the increase is 20% compared to the same period in year previously).<sup>154</sup>

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 solidarity.<sup>155</sup> Distribution of refugees to all member countries is then agreed upon in one scheme, but 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 states.<sup>156</sup> This means the number is only about 5 percent

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<sup>151</sup> "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](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics#Number_of_asylum_applicants:_drop_in_2017). Retrieved July 23, 2018

<sup>152</sup> "Vlaho Orepic: 'The Balkan route is formally closed'", <http://www.dw.com/en/vlaho-orepic-the-balkan-route-is-formally-closed/a-37520314>. Retrieved September 27 2017

<sup>153</sup> Frontex, "Risk Analysis for 2017", p. 6

<sup>154</sup> "Europe migrant crisis: Italy threatens to close ports as ministers meet", <https://www.bbc.com/news/world-europe-40470102>. Retrieved September 30 2017

<sup>155</sup> 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

<sup>156</sup> "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>. Retrieved September 30, 2017

of the total refugees that need to be share.<sup>157</sup> Facing this all Italy then decided to close its port that became route of refugee on the Mediterranean Sea. The failure of this 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 Eastern route for refugees from Syria before they cross over to Italy, which is like Greece, located strategically and frontline in refugee arrivals to Europe. In an effort to prevent the entry of immigrants through the Mediterranean sea region, the EU has trained and financed the Libyan coast guard. These coast guards are in charge of preventing boats from refugees entering the European region by blocking and pushing boats of immigrants that pass on Mediterranean sea.<sup>158</sup>

Meanwhile, the Italian government has sent military ships and personnel to intercept the ships of these immigrants together with Libyan coast guard.<sup>159</sup> Moreover, Italian government block ships carrying refugees and close 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 Mediterranean Sea route. This is a way to get the immigrants unable to reach Italy.

Although there are pros and cons in which this discourse has the full support of anti-immigrant groups that also make sweeps along the border to mainland Europe. Meanwhile, on the other hand, humanitarian organizations (NGOs) keep to make efforts to rescue the immigrants in the ocean. Furthermore, Italy's commitment to close its port for immigrant boat is seen in the case of refusal to let the Aquarius ship that carries 629 immigrants to land on its port.<sup>160</sup>

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 Middle East heading to Europe. Some of the authorities of the

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<sup>157</sup> *Ibid*

<sup>158</sup> "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/>. Retrieved September 28 2017

<sup>159</sup> "Migration trends shifting across Mediterranean region", <http://www.independent.com.mt/articles/2017-08-21/local-news/Migration-trends-shifting-across-Mediterranean-region-6736178013>. Retrieved September 28, 2017

<sup>160</sup> "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>. Retrieved July 23, 2018

European countries also encourage the implementation of this policy throughout the European region. The reluctance of European countries to accept immigrants enter their territory on the grounds that they are not genuine refugees. The governments of European countries argue that the boats bring immigrants to enter the European region also consists of immigrant with economic motives.

### **7.6. 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, become the reason for immigrants to take this route heading to Europe. Therefore, For European Countries, Libya is one of the keys and a buffer state for them to prevent immigrants from entering mainland Europe. Hence, some European countries keep to strengthen cooperation in security in the border with Libya.

In order to maintain security in border area, Deutsche Welle news released information that, European authorities has spent about half of the more than 90 million euros (\$103 million) for securities purpose in Mediterranean route of refugees.<sup>161</sup> This fact shows that mostly 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 refugees status or just economic immigrants) than let them entering into the land and and conduct of some screening process to decide their status. In particular, Italy has begun implementing a ‘turn back boat policy’.

However, several factors should be taken into consideration for European authorities not to impose ‘turn back boats’ policy. This because by turning away boats policy means the immigrants who seeking asylum have no chance to get protection in Europe and they will end up in detention center out of mainland Europe. The following are some of consequences for both European countries and especially to immigrants.

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<sup>161</sup> “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>. Retieved September 29, 2017



- ✓ Libyan detention center situation is not safe. Based on Amnesty international report, the refugees were subjected to abuse, including torture and rape.<sup>162</sup>
- ✓ They are treated like slaves. There are several cases of slavery against African immigrants<sup>163</sup>.
- ✓ 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 by 2015 through searching and rescuing, can reduce the death rate of refugees.
- ✓ The latest information based on IOM's report in July 2018 mentions that throughout 2018 alone there have been more than 1000 immigrants killed in the Mediterranean Sea.<sup>164</sup> 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 Mediterranean Sea after being refused to disembark by the Italian and Maltese governments on June 2018. This is considered as Europe's failure in handling immigrants.<sup>165</sup>

### 7.7. The Differences Condition in Detention Center and Transit Countries

Speaking of 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 widely international condemnation. While in Libya it seems a bit complicated for the European authorities to close its detention center in because after all Libya is their buffer country in preventing immigrants from entering the European land.

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<sup>162</sup> 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

<sup>163</sup> *Ibid*, p. 17-18

<sup>164</sup> “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>. Retrieved July 14, 2018

<sup>165</sup> “Migrant boat turned away by Italy arrives in Spain”, <https://af.reuters.com/article/topNews/idAFKBN1JD05V-OZATP>. Retrieved July 14, 2018



Broadly speaking the issue of immigrants (including asylum seekers) facing by EU countries is similar to that of Australia. In the case of immigrants heading to Australia, the transit country and the original boats that brought them mostly come from Indonesia. Although it is not easy for the Indonesian government to oversee all its territorial waters mainly because of the very long coastline  $\pm 81.000 \text{ km}^{166}$ , but the situation in Indonesia's internal security is quite stable. This 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 will depart will greatly affect immigrants and the lack of government control exacerbates the state of immigrants that also involve people smugglers.

### **7.8. Comparing Australia and European Countries in Implementing Policies**

Throughout the 5 year "turning back boats" policy by the Australian government, the asylum seekers to this country in difficult situations. The implementation of this policy resulted they were experiencing abuse. Moreover, they experienced a variety of violence started from the beginning of their efforts to reach offshore up to when they being put in the detention centers. This all affected to their mental health. In applying this 'turn back boats' policy, humanitarian values become marginalized because countries do not fully apply the convention on refugee law. Instead, these countries make their own internal policies and definitions on 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 as the foundation of international refugee law.

In the case of the refugee crisis in Europe, it seems that not all countries, especially the EU countries willing to involve in overcoming difficult situation that faced by some of its member countries. 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. To solve this problem requires commitment from all related parties to cooperate.

In relation between countries this policy affects bilateral relations. The

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<sup>166</sup> Marsetio, "Strategi TNI Angkatan Laut Dalam Pengamanan Batas Maritim NKRI", *Jurnal Sejarah CITRA LEKHA*, Vol. XVII, No. 1 Februari 2013, (2013), p. 1

implementation of policies that are expected to run perfectly without passing a boat to reach the country could be a breach to the sovereignty of other countries, just like what happened when Australian navy turn back boats into Indonesian territorial waters. The principle of mutual respect between countries, especially on sovereignty, must remain 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 substantial expenditures spent by countries in the operation of the ‘turn back boats’ policy are inherently ineffective. It would be better if the cost is used to help and empower the refugee within the limits permitted by law. 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.

Therefore a similar policy is unlikely to be applied in Europe as the situation and problems in the region are more complex. So far, the government’s ways in handling the immigrants heading to Europe are not much different from Australia. Post-closure of the Mediterranean Sea route has increased the risk of drowning victims in the oceans as European countries refuse immigrants to enter their territories even in urgent situation. In the end, no matter in which country, cooperation and commitment of all related parties involved are necessary in handling immigrants and asylum seekers.

## CHAPTER 8

### Indonesia – Australia Relations

#### 8.1. Tidal Relations between Indonesia-Australia

The relations between Indonesia-Australia have gone through a long period of time. During this time, the relations between two countries experienced ups and downs, distrust and also various occurrences that affected the relationship of both countries. Nevertheless, it cannot be denied that Indonesia has an important role in the region which also influences Australia and vice versa. As well as neighboring countries, it is undeniable that there is susceptibility in relationship between the two countries. There are periods in which the two countries face relational problems. .

The history records that Australia was involved and played an important role in the independence of Timor-Leste from Indonesia in 1999. Not only limited on government to government, domestic pressure such as community groups who want to influence Indonesian policies related to polemic of Timor-Leste, also have an impact on relations between the two countries.<sup>167</sup> Australia's involvement in the referendum of Timor-Leste is believed to be due to its national interests. Furthermore, it is commonly known that Australia is a country that aggressively used the issue of human rights violations in Timor-Leste, when the country is part of Indonesia.

Another similar situation happened in 2006 when Australia showed its alignment with asylum seekers from Papua (One of Indonesian Provinces) who were members of the separatist movement, and the Australian government gave them residence visas. Although the Indonesian government has explained the real situation regarding those asylum seekers, but Australian government insisted and issued visa for them. This all aroused anti-Australian sentiment, which were considered too meddling in Indonesian internal affairs. There are so many obstacles in developing neighboring relationships with the principle of mutual respect and non-interference between two countries.

Australia's policies in handling IMAs entry into the country increase the number of disagreements between the two countries. History shows that since the federation and even

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<sup>167</sup> *Ibid*, p.13

before, Australia's defense and the country's foreign policy have been dominated by the interests of seeking security in the Pacific.<sup>168</sup> Hence, it is very important for this country to always ensure security in the region, especially its sea lanes. This urges the country to be actively involved in activities to protect the area, especially those directly adjacent to Indonesia. The efforts to safeguard this security are not limited on the attacks from other countries and acts of terrorism, but also from influx of immigrants coming into the country. Therefore, the arrival of the IMAs inevitably raises concerns for the country, hence the Australian government issues various policies to secure its interests, although it often violates the rights and interests of other countries.

In 2013, following Australia's policy of refusing IMAs to enter its territorial waters, the issue of phone tapping carried out by the Australian government in 2009 to the President of Indonesia at that time, Susilo Bambang Yudhoyono, included the first lady and other government officials arose and became the topic of news in the mass media of both countries. This report comes from a secret document leaked by Edward Snowden and first revealed by The Guardian.<sup>169</sup> Tapping carried out by the Australian government under the administration of Kevin Rudd back then is certainly not acceptable to Indonesia. The act of tapping is certainly not justified in the ethics and norms of relations between countries. This is contrary to the concept of diplomatic relations and trust between the two countries. Moreover, this resulted the relations between the two countries in tension again.

As a neighboring country with its strategic position geographically, Australia cannot ignore the importance of Indonesia in its relations and foreign cooperation. Cooperation between Indonesia and Australia in the fields of trade, investment and education has begun since pre-independence of Indonesia in 1940.<sup>170</sup> Today, Indonesia is a route for Australian business, moreover, Indonesia in position 12th of largest partner Australia in trading sector.<sup>171</sup> As a country with biggets population in SouthEast Asia, Indonesia as a market and importer country for Australian agriculture and farming products. Indonesia's population is

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<sup>168</sup> Neville Meaney, "Australia's Foreign Policy: History and Myth", Australian Outlook, Vol. 23, No.2, August 1969, p. 173

<sup>169</sup> "Australia Sadap Telepon SBY dan Sejumlah Menteri Indonesia"  
<https://internasional.kompas.com/read/2013/11/18/0950451/Australia.Sadap.Telepon.SBY.dan.Sejumlah.Menteri.i.Indonesia>. Retrieved November 23, 2018

<sup>170</sup> "Masa-masa kemakmuran – diplomasi ekonomi antara Indonesia dan Australia",  
[https://indonesia.embassy.gov.au/jaktindonesian/AR15\\_006.html](https://indonesia.embassy.gov.au/jaktindonesian/AR15_006.html), Retrieved November 16, 2018

<sup>171</sup> "Overview of Australia's aid program to Indonesia", <https://indonesia.embassy.gov.au/jakt/development-programs-in-indonesia.html>. Retrieved November 16, 2018

larger than Australia, and its middle class is larger than Australia's entire population<sup>172</sup>, besides a fairly good economic growth in the last decade. All these facts are favorable to Australia; this country become a potential market for many of Australian products.

In addition, Indonesia not only partner for Australia in economic cooperation, but also in education. Australia is one of the favorite destination countries for Indonesian students to continue their education to a higher level. In 2014, as many as 13,700 Indonesian students were enrolled in educational institutions in Australia.<sup>173</sup> Not just relying on scholarships,, many of Indonesian students finance their education in Australia independently. It means that, these students provide economic benefits for the income of the Australian community. In the relationship of government to government, based on information from the Indonesian Ministry of Education of Republic of Indonesia, in the past 2015, the two countries agreed to strengthen relations through cooperation in education and culture.<sup>174</sup>

In the tourism sector, Indonesia is one of the main destination countries for Australian tourists. Supported by adjacent locations, especially the island of Bali, this encourages the level of Australian community visits to Indonesia. Even based on information from the Statistics Indonesia, in January 2018, Australian tourists in Bali were the largest visitors, reaching 24.20% of the total number of visitors.<sup>175</sup> This means that the Australian tourists have significance in revenue of Indonesia's tourism sector.

All of the examples mentioned above are only a few of the cooperation between the two countries. There are still many more cooperation and assistance, such as The Australian Agency for International Development (AusAID), infrastructure cooperation projects, etc. Therefore, the expansion of bilateral partnerships between the two countries is important. Furthermore, Indonesia which is located in a strategic geographical position and as the entrance to Australia, makes this country one of the key factors that cannot ignored by Australia in maintaining its security and defense.

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<sup>172</sup> Christopher B. Roberts and Ahmad D. Habir, "Australia's relations with Indonesia: Progress despite economic and socio-cultural constraints?", National Security College Issue Brief No.1, March 2014

<sup>173</sup> *Ibid*

<sup>174</sup> The commitment of the two countries to strengthen cooperation in the field of education can be find on the website of the Indonesian Ministry of Education <https://www.kemdikbud.go.id/main/blog/2015/11/indonesia-dan-australia-perkuat-kerja-sama-pendidikan-dan-kebudayaan-4841-4841-4841> as retrieved on November 16, 2018

<sup>175</sup> "Januari 2018, wisman ke Bali mencapai 358.065 orang", <https://bali.bps.go.id/pressrelease/2018/03/01/717093/januari-2018--wisman-ke-bali-mencapai-358-065-orang-.html>. Retrieved November 16, 2018

## 8.2. Indonesia-Australia Security and Defence Cooperation

Based on the importance of maintaining regional security, Indonesia and Australia have several cooperations as results from various forums involving the both countries. In November 2006, Indonesia and Australia signed a cooperation agreement or commonly known as Lombok Treaty. The agreement between both countries on the Framework for Security Cooperation. For Indonesia this agreement is motivated by its interests as an island nation surrounded by the ocean and the importance of maintaining its territorial integrity, while on the Australian side, it has an interest in ensuring regional security stability. In the Lombok Treaty has been agreed not only about to combat terrorism and transnational crime but also mutual respect and support for sovereignty and territorial integrity of each other.<sup>176</sup> The whole agreement in Lombok Treaty contains spirit to strengthen bilateral cooperation of both countries.

Following the Lombok Treaty, on November 2010, through the joint statement Indonesia- Australia, both countries declared their agreement to encourage and implement Lombok Treaty and Its Plan of Action on Defence Cooperation and this would be a priority on annual meeting of Indonesia-Australia Ministerial Forum (IAMF).<sup>177</sup> This annual forum is a form of commitment of both countries to realize their agreement and strengthen bilateral cooperation. Furthermore, both countries also emphasized their commitment to expand and strengthen cooperation such as in People Smuggling and Transnational Crime.<sup>178</sup> It cannot be denied that the issue of People Smuggling and Transnational Crime is related to IMAs in Australia.

Moreover, both countries have a dialogue namely Indonesia-Australia Foreign and Defence Ministers' Meeting (2+2 Dialogue). This is a forum to discuss bilateral and strategic issues at the ministerial level involving the Ministry of Foreign Affairs and Defense of the two countries.<sup>179</sup> On 2+2 Dialogue in 2015, Indonesia and Australia focus on efforts to strengthen maritime cooperation and overcome the root causes of irregular migrant issue.<sup>180</sup>

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<sup>176</sup> Article 2(1) and 2(2) provide obligation for both countries to mutual respect for the sovereignty and territorial integrity

<sup>177</sup> "Indonesia-Australia Join Statement Jakarta, 2 November 2010",

<https://indonesia.embassy.gov.au/jakt/js2010.html>. Retrieved November 11, 2018

<sup>178</sup> *ibid*

<sup>179</sup> Pertemuan 2+2 Indonesia-Australia Majukan Kerja Sama Maritim. Retrieved November 11, 2018, from

<https://www.kemlu.go.id/id/berita/Pages/Pertemuan-2-2-Indonesia-Australia-Majukan-Kerja-Sama-Maritim.aspx>.

<sup>180</sup> *ibid*

In every forum of 2+2 Dialogue, discussion of strategic issues such as security, regional stability and irregular migrants become an inseparable part of this forum. In the end, the maritime cooperation between the two countries that have been running steadily remains despite stopped for a moment due to several issues between the two countries.

Meanwhile in the field of security in handling the issue of terrorism, Indonesia and Australia have cooperation in Counter terrorism. In this field both countries agreed to develop cooperation in law enforcement and share intelligence regarding terrorist activities in 2015. Prevention and eradication of terrorism has been a concern of the Australian government in recent years. This is mainly because many Australians were victims of terrorist acts on the Bali Bombings I (2002) and Bali Bombings II (2005). Furthermore, the Australian embassy in Indonesia was also the target of terrorist attacks in 2004. Related to this cooperation, two institutions from both countries namely The Australian Federal Police (AFP) and Indonesian National Police (INP) have another agreement on 2015 to prevent and combat transnational crimes that affect both Australia and Indonesia.<sup>181</sup> Moreover, this cooperation is not only in counter terrorism, but also includes narcotics trafficking, fraud, child sexual exploitation and people smuggling.

Another important international forum that involves Indonesia and Australia is Bali Process. This forum aims to share information and policy dialogue. Established in 2002, Bali Process focuses on the issues relating to people smuggling, human trafficking and transnational crime. In the end most of all these crimes topic lead to the IMAs issue. In Bali declaration on people smuggling, human trafficking and transnational crime on March 2016, the Ministers of member states acknowledged that it was not simple in handling issue related to IMAs.<sup>182</sup> Therefore, in handling IMAs requires the attention of all the international elements involved.

Not only that, at the end of August 2018, Indonesia-Australia relations entered a new phase. The two countries agreed to further enhance their bilateral relations. This agreement then be implemented in Indonesia-Australia Comprehensive Partnership (IA-CSP). The agreement is not only to deepen economic partnership and development, one of the pillars in

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<sup>181</sup> More information about this cooperation can be find on the website of Australian Embassy in Indonesia on [https://indonesia.embassy.gov.au/jakt/MR15\\_020.html](https://indonesia.embassy.gov.au/jakt/MR15_020.html)

<sup>182</sup> Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime, Retrieved November 11, 2018 from <https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016.pdf>

the agreement is maritime cooperation.<sup>183</sup> This further confirms the awareness of the two countries about the importance of maritime cooperation. Furthermore, this partnership shows the enthusiasm of the two countries in pursuing the mutual interests of both countries in the framework of bilateral cooperation.

Some of cooperations in security and defence as mentioned above show that Indonesia and Australia actually have an understanding that cooperation between two countries is very important, and for this all both countries need to compromise in looking for a comprehensive solution. Apart from various obstacles and situations faced by Australia and Indonesias, both countries keep actively collaborate and build cooperation. Despite there are frequent conflicts between the two countries, it cannot nullify the importance of increasing and expanding cooperation of both countries.

### **8.3. The Future of Indonesia-Australia Relations**

Often referred to as close countries geographically, but not in a real relationship, Indonesia-Australia have experienced ups and downs relations. As sovereign countries that carry their own interests in international interactions, it is undeniable that in its bilateral relations Indonesia and Australia faced various problems and tensions that cannot avoid. However, the fact that the two countries have the same interests and require cooperation especially in the area of security, maritime and defense are decisive factors in their bilateral relations.

As a neighboring countries the problem will always be there, policies taken by one country often affect other. Nevertheless, the most important thing is how to address all these problems and the good will of both parties in looking for solutions. Regardless some of Australian policies and activities that consider as breaches in international common practices, Indonesia will always prioritize a dialogue forum to discuss it instead of using power.<sup>184</sup> This is in line with Indonesia's principles which prioritize cooperation and dialogue in its foreign relations. Furthermore, as stated in the outline of Indonesia's foreign relations, this country has basic principle called Free and Active with a commitment to mutual respect between

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<sup>183</sup> The detail of agreement can be find in declaration of Indonesia-Australia at the website of Department of Foreign Affairs and Trade of Australia or in the appendix pages of this study

<sup>184</sup> Interview with Soemadi D.M. Brotodiningrat, Adviser to the Minister of Defense on International Affairs, about Indonesia-Australia relationship, March 9, 2018



countries.

Cooperation on the basis of mutual need between the two countries is indeed unavoidable. For example, recently in the defense sector, a number of prominent Indonesian and Australian defense industry members have signed collaboration agreements to develop anti-mine armored vehicles, this production will use an Australian design and adjusted to the operational needs of the Indonesian National Armed Forces.<sup>185</sup> Meanwhile, in the bilateral maritime security sector, in 2016 the two countries conducted joint maritime patrols.<sup>186</sup> These agreements were produced after the incidents of violations of Indonesian sovereignty by Australia and some of them were continuations of existing cooperation.

Those all above just some of the proofs that the two countries need each other and can cooperate for mutual progress. As commonly known that, there is no country can fulfill its national interests without relating to others, especially neighboring countries. Therefore, despite being involved in several disputes and misunderstandings, in the end the two countries will restore bilateral relationships on the basis of mutual interests. This all will be a challenge to both countries to strengthen the relation and to address bilateral relation problems in the future.

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<sup>185</sup> Dialog 2+2 Menteri Luar Negeri dan Pertahanan Indonesia-Australia Keempat, [http://indonesia.embassy.gov.au/jaktindonesian/SM16\\_071.html](http://indonesia.embassy.gov.au/jaktindonesian/SM16_071.html) Retrieved March 10, 2018

<sup>186</sup> *Ibid*

## CHAPTER 9

### Research Implications and Conclusion

#### 9.1. Theoretical Implications

According to Hans J. Morgenthau's theory based on concept of national interest, every political action is seen as directed toward keeping, increasing, or demonstrating power.<sup>187</sup> Referring to this theory, Australia's actions that violate the sovereignty of the territory of Indonesia are one form of showing off its power and domination over other countries. This kind of action is a common behavior when a country considers itself has more power than others in pursuing its national interests.

Moreover, even nowadays the practice of mobilizing force in border disputes between countries continue, This can be categorized as using hard power in gain its national interest. In this case, power is a means used to secure the national interests of the country concerned. Seeing this fact, it seems that many states still believe that showing off power especially hard power by using their devices is a more effective way to reduce everything they perceive as a threat to sovereignty or ownership than any other approaches.

Meanwhile, in relation with sovereignty, Kristine Beurskens & Judith Miggelbrink in *Special Section Introduction – Sovereignty Contested: Theory and Practice in Borderlands* argue that :

“However, sovereignty is fundamentally related to controlling and filtering of movements – of people as well as of goods and money”.<sup>188</sup>

Referring to this opinion, in other words, the state is the holder of sovereignty over its territory so that it has full power in regulating the movement of outgoing and incoming elements from outside the country.

Sovereignty can be interpreted and used in a variety of ways, but generally sovereignty refers to the supreme power within the state.<sup>189</sup> Therefore, government as the state apparatus has the right to secure its territory from external threats through a series of

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<sup>187</sup> J. Peter Pham, “What Is in the National Interest? Hans Morgenthau’s Realist Vision and American Foreign Policy”, *American Foreign Policy Interests*, 2008. p. 257-258

<sup>188</sup> Kristine Beurskens & Judith Miggelbrink, *Special Section Introduction – Sovereignty Contested: Theory and Practice in Borderlands*, *Geopolitics* 2017, Vol 22, No.4 p. 753

<sup>189</sup> James Crawford, *Sovereignty as a legal value*, *International Law*, Cambridge university, 2012 p.118

binding policies and regulations. Regarding this sovereignty, the state as the highest authority in a jurisdiction is obliged to secure its territory from threats and harassment by other parties and has the right to apply various methods of security. As a sovereign country, each country will strive to protect national borders within its jurisdiction. Thus, every country which declares itself to be a sovereign state will always show action-reaction to things related to or threats to the sovereignty of their country.

However, this research proves that in foreign policy in order to pursue a national interests, a country cannot always act as an "individual actor" who is egocentric by showing off power. It is not always safeguarding the sovereignty of a country must be carried out by mobilizing forces such as through the country's armed forces. Also, it is not always a violation by another country has to be responded by using force. Regarding this, Morgenthau has explained that in using power must be adjust to the situations of international politics.<sup>190</sup>

In the case of Indonesia-Australia relations related to asylum seekers and waters border security, the refusal of the entry of IMAs through aggressive operations by Australia that affects Indonesia, in the end would be a threat to Australia's own interests in overcoming boat people. Crossing the border and entering the territory of other countries which is in this case conducted by Australian navy can provoke conflict between states. Since the two countries already have various maritime cooperations, this interest should be emphasized in the agreement between the two countries, instead of making policies that can trigger tensions between the two countries.

However, as stated by A. Giddens in *The Nation State and Violence* that "the state is a container of power" (Giddens: 1987). This power will be used by every country that assumess its sovereignty is threatened by other countries. Disputes related to sovereignty and borders are very sensitive and could trigger conflicts between states. Therefore a friendly approach is needed, such as by accommodating interest of other country through cooperation in order to pursue its own national interests too. Because after all, each country will pursue its national interests in foreign relations, and cooperation will reach a point where they also have to adjust the interests of other countries and fight for their interests together due to the linkage and interdependence.

Jean Bodin on his concept of modern sovereignty assumes that power and law are the

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<sup>190</sup> J. Peter Pham, "What Is in the National Interest? Hans Morgenthau's Realist Vision and American Foreign Policy", *American Foreign Policy Interests*, 2008. p. 258

components of sovereignty. Bodin argues that sovereignty is the highest and absolute thing of the state, based on Bodin's opinion, nothing can hinder sovereignty other than limited by divine and natural law.<sup>191</sup> In the concept of international law, sovereignty is also recognized as a very important thing that is owned by a state. Therefore, in relations between nations, a country's sovereignty over its territory is highly valued.

In the modern era, Sovereignty can be interpreted as the authority of a region, In this case, the sovereign holder gains authority from legitimized sources.<sup>192</sup> Sovereignty refers to certain territories where authority, which in its modern form is the state represented by the government that has full power over the territory and everything above it. In accordance with this principle, the existence of law becomes one of the sources of authority for the state in carrying out its sovereignty at the territorial boundary.

In the context of inter-state within the framework of international relations, international law is the source of the authority of the state which legalizes actions in maintaining its sovereignty. With the existence of sovereignty over the state, which its authority is carried out by a legitimate government, the government is obliged to protect the sovereignty and its citizens and pursue their national interests when dealing with other countries.

However, in addition to having sovereignty as the identity possessed by the nation-state in the context of international relations, the state also has interdependence. This is because no country is able to fulfill all of its own needs. In "Power and Interdependence", Robert O. Keohane & Joseph S. Nye consider politics in terms of relations between countries as a form of exchange for fulfilling those needs.<sup>193</sup> This interdependence then can be used by every country as bargaining power, not only in the dealing to pursue its national interests but also in the efforts to create regional stability.

Furthermore, soft power is identical to the situation when there is interdependence between countries. This is in accordance with one of the characters of interdependence according to Robert Keohane and Joseph Nye. They explain that military issues cannot be used when there are interdependence issues. Therefore, interdependence encourages relations between

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<sup>191</sup> Karen Gevorgyan, Concept of State Sovereignty: Modern Attitudes | Materials of conference devoted to 80th of the Faculty of Law of the Yerevan State University: Yerevan, YSU Press, 2014, p. 432

<sup>192</sup> Daniel Philpott "Sovereignty", The Stanford Encyclopedia of Philosophy (Summer 2016 Edition), Edward N. Zalta (ed.), Retrieved July 3, 2018 from <https://plato.stanford.edu/archives/sum2016/entries/sovereignty/>

<sup>193</sup> Robert O. Keohane & Joseph S. Nye, Power and Interdependence, International Organization, Vol.41 No.4, Autumn 1987, The MIT Press p.728

countries to be better because of reduction of conflict due to the elimination of military power as a form of hard power (Keohane & Nye : 2001).

The application of soft power due to interdependence is in line with the case study in Indonesia-Australia relations. Initially, power was used to safeguard its national interests of a state when dealing with others. In the case of Indonesia-Australia, the power used by Australia is the navy army. But later, despite violations in international law the conflict between the two countries did not continue. This is believed to be a result of the interdependence between countries

Interdependence is one of the important factors and key holder in reducing turmoil when there is friction in relations between states because each of them pursues their national interests. With the awareness of interdependence, the actors in international relations will avoid direct confrontation by prioritizing dialogue in the context of resolving problems and conflicts between countries. In this case, power will not take a position in front of in dealing with other countries, but only as a companion of a state in its bargaining process. By implementing this concept, countries with limited resources, especially in the term of military will also get benefit in foreign relations, as long as they have a certain bargaining value that can be offered to other countries with more power.

In the context of Indonesia-Australia relations, Indonesia is a developing country that has an important meaning for Australia. Indonesia has value for Australia not only economically, which is a market share but also in terms of security. As a bordering country, Indonesia, which is a maritime country, is a buffer for Australia in securing its region. Military cooperation between the two countries during this time has shown this. Therefore Indonesian maritime security is also very important for Australia.

It can be concluded that using hard power especially in the meaning of military power is not the best way to apply in interaction with foreign countries when there is any friction of interests. There is a factor of interdependence between countries that can bridge differences and make a constructive conflict solution. Dialogue and cooperation are the key in addressing issues of bilateral and multilateral relationship. Through these all, states can still pursue their national interests in peaceful and mutually beneficial ways. In the end, a state actor is the party that sets policies and runs diplomacy strategies that will determine their choices in international politics. The state actors which in this case refers the government of a country will decide determine the form of power to be used in its international politics.

## **9.2. Practical implications**

The asylum seekers issue is very complex, hence the policies applied in handling situation related to IMAs cannot be done partially. Especially because this issue has caused tensions between affected countries. The participation and commitments from affected countries such as from the countries of origin, transit countries and destination countries are urgently needed in addressing this situation. It takes full commitment from all parties involved to overcome this problem situation. This is important in finding solutions for asylum seekers.

The thing that should not be ignored is knowing the root of the problems in the conflict that resulted in asylum seekers fleeing from their home countries. Furthermore, the policy towards asylum seekers should not only be limited to protecting the internal interests of the destination country but also about how to protect the rights of asylum seekers and refugees without ignoring the principle of mutual respect between countries.

Cooperation between Indonesia and Australia in dealing with shared issues is more important than exposing domestic interest related to the issue solely. It is important for every state to control passion to dominate others through its power and not take actions that can trigger conflict. Instead of using power to suppress or threaten other countries, it would be more useful to use it to cooperate and empower each other in international relations. The actions that can provoke conflict between countries should be avoided. Regional security and peace can only be created if there is mutual understanding among countries in the region.

Cooperation in overcoming problems especially with involving parties such as in asylum seekers issue should not be neglected. The situation facing by asylum seekers is a humanitarian issue, hence this problem cannot be resolved by implementing violence and coercion. Dialogue and cooperation must be prioritized in finding solutions.

In fact, the Australian government's policy of turning back boats into Indonesian waters is a form of distrust of Indonesia's ability to overcome people smuggling who pass through its territorial waters. People-smuggling is a transnational crime that usually involves local residents, hence, it is important to get a comprehensive solution. In the end, cooperation and win-win solutions are needed between the parties involved, not only Indonesia and Australia but also the countries of origin of these boat people.

### 9.3. Conclusion

The Australian government's policy in implementing OSB is motivated by the increase in IMAs numbers in recent years. The arrival of the IMAs which was generally carried by boat from Indonesian waters then urged the Australian government as policy-makers to implement 'turn back boats' policy. Through this policy the Australian navy can send the asylum seekers to the detention center in the third countries or even push the boat that bring illegal passengers back into Indonesian territorial waters. This policy was made by the Australian government on the basis of securing its domestic interests from the wave of the arrival of IMAs. The Australian government consider that it is very urgent to take decisive action for its internal interests.

The actions taken by Australian government in implementing the OSB policy actually show that the dialogue and cooperation between Indonesia and Australia in the field of maritime security was not going well. There seems to be mistrust in handling *boat people* which is a humanitarian issue. On the other hand, Indonesian government also has difficulty in securing its vast waters from activities of people smuggler that take advantage of asylum seekers.

The tendency of the state to be self-centered in dealing with issues involving domestic interests is one of the triggers of conflict between countries. It is undeniable that the internal policies of a country also can give an impact to other countries. Policies that are implemented through coercive and aggressive ways, actually not the solution. The reason for stopping people smuggling cannot be justified in implementing this policy There will be more problems that arise as the consequence. Especially if this concern of humanitarian issue which is a shared responsibility of the international community.

The sovereignty of a state is a crucial thing and concerns the dignity of a nation. Nevertheless, Indonesia-Australia relations are unique and always experience ups and downs. After examining and analyzing situation faced by Australia and Indonesia, it can be concluded that mutual interests and interdependence are the important factors that can reduce tensions between two countries. Despite all of this does not negate the importance of maintaining good relations between countries. Another important factor from the Indonesian community side, although there is sometimes anti-Australian sentiment arising in Indonesia, but this the amount of importance and interdependence between the two countries ultimately took over the sentiment.

After all, although there are many tensions between the two countries in dealing with various issues, eventually both countries need each other. It is arguable that the interdependence between the two countries is the main reason that in some issues between Australia and Indonesia, the problem did not get worse. There is a tendency for countries to ignore violations committed by others when there are other interests that they want to pursue.

In foreign relations between Indonesia and Australia, one finding that can be concluded is the fact that the two countries have been in conflict from time to time, but both countries tend to be pragmatic. Australia cannot ignore the fact that Indonesia is important in maintaining regional security which also has an impact on its internal security. In addition, there are also various benefits in the economic field achieved by the country in its cooperation with Indonesia. On the other hand, Indonesia also benefited in various cooperations between the two. Moreover, Indonesia is one of the countries that receives the most foreign aid from Australia.

Nevertheless, there is one thing that should be a concern, despite the relations between the two countries have improved, but Australia's various policies and actions which can be considered as a disruption or unrespectful towards Indonesia can be a threat to the cooperation of the two countries. As an instance, this was proven when the Australian government phone tapped the President, first lady and a number of Indonesian government officers. In response, the Indonesian government froze cooperation in the field of maritime security. This is certainly detrimental to Australia because one of the purposes of this cooperation to prevent the activities of people smuggling entering the country.

In addition, although it has not yet had a significant impact, however, it cannot be ignored that Australia's various policies in the field of defense and security which are considered unpopular and detrimental to Indonesia can be a threat to the cooperation between the two countries. Whereas on the other hand, the two central countries are intensely increasing cooperation in various fields. It cannot be denied that Indonesia has a high bargaining position because of its strategic location and as the entrance to Australia, this related to the territorial security issue of Australia. This can be an advantage and as a bargaining power for Indonesia in pursuing its national interests towards Australia through foreign policy.



In the end, Through examining all the factors and variables in this research, then the conclusion can be generated that : the fact that each country will pursue its national interests in dealing with others cannot be negated. Nevertheless, there will be the point when a state should adapt and accommodate other's interests and cooperate together in order to gain its national interest together. Above all of that, the principle of mutual respect between countries remains a matter that must be considered in pursuing national interests.

## APPENDIX

### List of Interviewees

1. Dejan Micevski  
Senior Programme Coordinator International, Organization for Migration (IOM)  
Indonesia
2. Isa Soemawidjaja  
Assistant Protection Officer, United Nations High Commissioner for Refugees  
(UNHCR) Indonesia
3. Ministry of Foreign Affairs of Austria (Correspondence with Staff of Ministry, as team  
of Sebastian Kurz- the Minister of Foreign Affairs of Austria )
4. Oliver White  
Head of Policy and Advocacy, Jesuit Refugee Service Australia
5. Soemadi D.M. Brotodiningrat  
Adviser to the Minister of Defense on International Affairs
6. Tri Nuke Pudjiastuti  
Deputy Chairman for Social Sciences and Humanities, Indonesian Institute of  
Sciences

**AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF  
INDONESIA ON THE FRAMEWORK FOR SECURITY  
COOPERATION (MATARAM, LOMBOK, 13 NOVEMBER 2006)**

**[2006] ATNIF 25**

**Documents tabled on 6 December 2006:**

**National Interest Analysis [2006] ATNIA 43**

**With attachment on consultation**

**Text of the proposed treaty action**

**Background information:**

**Country political brief and country fact sheet**

**List of other treaties with Indonesia**

**List of treaties of the same type with other countries**

**NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY**

**SUMMARY PAGE**

**Agreement between Australia and the Republic of Indonesia on the Framework for  
Security Cooperation (Mataram, Lombok, 13 November 2006) [2006] ATNIF**

**25**

## **Nature and timing of the proposed treaty action**

1. The proposed Treaty action is the Australia-Indonesia Agreement on the Framework for Security Cooperation.
2. In accordance with Article 10(1) of the Treaty, the Treaty shall enter into force on the date of receipt of the last notification by which the Parties notify each other that their internal requirements for entry into force have been fulfilled.
3. Indonesia is currently seeking parliamentary ratification of the Treaty. The Treaty will be considered by Commission I of the Indonesian Parliament (which covers Defence, Foreign Affairs, Communication and Information).
4. The Treaty will not terminate any existing bilateral treaties upon entry into force. In accordance with Article 2(6), the Treaty makes clear that nothing in the Agreement shall affect in any way the existing rights and obligations of either Party under international law. Reflecting the Treaty's status as a framework agreement, the preambular paragraphs recognise the value of bilateral agreements and arrangements between the two countries since 1959 including the major bilateral instruments that have provided a strong legal framework for dealing with security issues.

## **Overview and national interest summary**

5. Australia and Indonesia maintain a shared goal of peace, security and prosperity in the region and recognise the importance of continuing close cooperation on matters affecting their common security as well as their respective national security. The Treaty provides a strong legal framework for encouraging bilateral dialogue, exchanges and implementation of cooperative activities, and provides a firm basis for the conclusion of separate arrangements in specific areas. The Treaty also sets out a number of key principles which shall guide the Parties in their relations with each other, consistent with the UN Charter, including clear

undertakings of support for each other's sovereignty, territorial integrity and independence. The Agreement also expressly preserves the existing rights and obligations of each Party under international law. The Treaty is practically focused and provides direction to agencies involved in cooperative activities to combat terrorism and transnational crime. It strengthens commitments to cooperate on defence, law enforcement, counter-terrorism, maritime security, and on emergency management and response. The Agreement will be Australia's first security treaty with a regional country to cover comprehensively traditional and non-traditional security threats. It should set the benchmark for others in the region and will contribute to the stability and prosperity of both countries and the broader Asia-Pacific region.

### **Reasons for Australia to take the proposed treaty action**

#### Australia-Indonesia bilateral relationship

6. Australia's relationship with Indonesia is strong and broad-ranging, reflecting a shared commitment to advancing cooperation on the many bilateral and regional interests important to both countries. In the context of the Australia-Indonesia Joint Declaration on Comprehensive Partnership signed by the Prime Minister and President Yudhoyono in April 2005, both countries are committed to strengthening further bilateral relations based on respect for each other's territorial integrity and unity and consolidating and advancing cooperation in key areas, including security, counterterrorism and other non-traditional security threats including avian influenza, disaster management, and illegal fishing.

7. Australia and Indonesia maintain a shared goal of peace, security and prosperity in the region and recognise the importance of continuing to cooperate closely to combat terrorism and other non-traditional security threats in the region. These threats are serious and present long-term challenges that require sustained and coordinated action. Both countries also recognise the importance of regional bodies in advancing cooperation against transnational threats, including APEC, the ASEAN Regional Forum and the East Asia Summit.

8. The fight against terrorism and transnational crime is a priority for Australia and Indonesia. Both Governments have sought to develop an extensive, broad-based program of

bilateral cooperation to combat terrorism and other forms of transnational crime and non-traditional security threats, especially in areas such as people smuggling, narcotics, money laundering, aviation and maritime security, and outbreaks of disease. In combating these threats, Indonesia and Australia have forged close partnerships between police and defence forces, immigration and customs officials and security and intelligence agencies, including by concluding formal arrangements (such as the 2002 Memorandum of Understanding on Terrorism; the 2002 MOU on Combating Transnational Crime and Developing Police Cooperation; and the 2006 MOU concerning Cooperation on Migration and Border Control Management).

### Negotiating history

9. The Australian and Indonesian Governments have long recognised the potential value of a bilateral security agreement aimed at enhancing both countries' capabilities in combating traditional and non-traditional security threats. During a visit to Australia in October 2003, the then Indonesian Coordinating Minister for Political and Security Affairs, HE Dr Susilo Bambang Yudhoyono, spoke publicly about the value of a bilateral security treaty in combating such threats. Following Dr Yudhoyono's inauguration as President of the Republic of Indonesia in October 2004, the Minister for Foreign Affairs, The Hon Alexander Downer MP and the Indonesian Minister of Foreign Affairs, HE Dr N Hassan Wirajuda, held discussions about the possibility of negotiating a modern bilateral security agreement. They directed their respective ministries to commence discussions on the proposal. Australian agencies prepared an initial draft text of the Treaty in late 2004 and the Australian Embassy in Jakarta provided the Indonesian Ministry of Foreign Affairs with a general outline of possible elements to be included in the Treaty in January 2005. At the Seventh AustraliaIndonesia Ministerial Forum held in Canberra on 17 and 18 March 2005, Foreign Ministers Downer and Wirajuda reaffirmed their commitment to negotiating a modern security agreement.

10. The Joint Declaration on Comprehensive Partnership between Indonesia and Australia signed in Canberra on 4 April 2005 by the Prime Minister and President Yudhoyono stated that both countries saw "value in concluding a security agreement which

would provide a framework for new directions in our security relationship”. Mr Downer wrote to Dr Wirajuda in July 2005, confirming that negotiating a bilateral security Treaty would be a priority for the Government.

11. In the Joint Ministerial Statement from the Eighth Australia-Indonesia Ministerial Forum held in Bali on 29 June 2006, Ministers “reaffirmed support for the conclusion of a bilateral agreement for security cooperation by the end of 2006 which would provide a framework for the existing and future development of the security relationship”. Ministers also agreed that there would be value in the Agreement “providing a treaty-based expression of strong support for each country’s sovereignty and territorial integrity, including Indonesia’s sovereignty over Papua”.

12. Formal negotiation rounds on the text of the Treaty were held in Jakarta in August 2006 and in Canberra in September 2006.

13. The Treaty was signed by the Minister for Foreign Affairs, The Hon Alexander Downer MP, and the Indonesian Minister of Foreign Affairs, HE Dr N Hassan Wirajuda, in Lombok, Indonesia, on 13 November 2006.

#### Overview of the Agreement

14. The Agreement is a balanced, forward-looking instrument which provides a framework for deepening and expanding bilateral cooperation and exchanges on matters affecting the security of both countries.

15. The Agreement provides a strong legal framework for encouraging dialogue, exchanges and implementation of cooperative activities. It draws together the threads of the security relationship with Indonesia and provides a firm basis for the conclusion of separate arrangements in specific areas. Existing and future MOUs on such issues as counter-terrorism, defence cooperation and police cooperation will operate within the overarching framework of the treaty-level Agreement and be guided by the principles enunciated within.

16. The Agreement is practically focused and provides direction to agencies involved in cooperative activities to combat terrorism and transnational crime. It strengthens commitments to cooperate on defence, law enforcement, counter-terrorism, maritime security, and on emergency management and response. The Treaty also contains a clear undertaking of support for each other's territorial integrity.

17. Overall, the Agreement will be Australia's first security treaty with a regional country to cover comprehensively traditional and non-traditional security threats. It should set the benchmark for others in the region and will contribute to the stability and prosperity of both countries and the broader Asia-Pacific region.

## **Obligations**

18. Article 1(1) provides that the Treaty's main objectives are to establish a framework for deepening and expanding bilateral cooperation and exchanges, and to intensify cooperation and consultation between Australia and Indonesia on matters affecting their common security and respective national security. Article 1(2) provides that the Treaty also establishes a bilateral consultative mechanism for encouraging intensive dialogues, exchanges and implementation of cooperative activities and to strengthen institutional relationships.

19. Article 2(1) and 2(2) provide that, in their relations with one another, Indonesia and Australia shall be guided by certain fundamental principles, consistent with the Charter of the United Nations. These principles include: equality, mutual benefit, recognition of each Party's interest in the other's stability, security and prosperity, and mutual respect for the sovereignty, territorial integrity, national unity and political independence and non-interference in the internal affairs of one another. Article 2(3) provides a treaty-level commitment that Australia and Indonesia shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other party. These principles are to be interpreted in a manner consistent with the Parties' existing international obligations, including those under the



United Nations Charter, and their respective domestic laws. The obligation set out in Article 2(3) would not prevent peaceful demonstrations conducted in accordance with the law, political commentary or free speech from occurring. Article 2(4) provides that the Parties undertake to settle any disputes between them by peaceful means. Article 2(5) provides that the Parties refrain from the threat or use of force against the territorial integrity or political independence of the other. Article 2(6) confirms that nothing in the Treaty shall affect in any way the existing rights and obligations of either Party under international law.

20. Article 3(1) to 3(3) covers defence cooperation, and provides that the Parties shall consult on defence policies, promote capacity building through military education, exchanges and exercises, and facilitate cooperation in mutually beneficial defence technologies and capabilities.

21. Article 3(4) to 3(7) covers law enforcement cooperation, and provides that the Parties shall strengthen police-to-police links, build law enforcement capacity, intensify joint and coordinated operations, and cooperate in preventing and combating crime related to people smuggling, money laundering, terrorist financing, corruption, illegal fishing, cybercrimes, narcotics trafficking, and arms trafficking.

22. Article 3(8) to 3(11) covers counter-terrorism cooperation and provides that the Parties shall do “everything possible individually and jointly to eradicate terrorism and extremism”, cooperate in facilitating “effective and rapid responses in the event of a terrorist attack”, and strengthen terrorism-related intelligence cooperation.

23. Article 3(12) covers intelligence cooperation and provides that the Parties shall cooperate and exchange information and intelligence on security issues in compliance with their respective national legislation.

24. Article 3(13) to 3(15) covers cooperation on maritime security and aviation safety and security, and provides that the Parties shall strengthen bilateral cooperation and capacity building activities in relation to maritime and aviation security.

25. Article 3(16) and 3(17) covers the prevention of proliferation of weapons of mass destruction and provides that the Parties, in recognition of their shared commitment not to develop, produce, acquire or use nuclear weapons or other weapons of mass destruction (WMD), shall cooperate to prevent the proliferation of WMD and shall strengthen bilateral nuclear cooperation for peaceful purposes, in accordance with international law.

26. Article 3(18) and 3(19) covers emergency cooperation and provides that the Parties shall cooperate, as appropriate and as requested, in facilitating “effective and rapid coordination of responses and relief measures in the event of natural disasters or other such emergency”, and cooperate on “capacity building for disaster preparedness and response”.

27. Article 3(20) covers cooperation in international organisations on security-related issues and provides that the Parties shall consult and cooperate on security issues in the UN, and other international and regional bodies.

28. Article 3(21) covers community understanding and people-to-people cooperation, and provides that the Parties shall endeavour to foster interaction between their respective institutions and communities with a view to improving mutual understanding of security challenges and responses to them.

29. Article 4(1) and 4(2) provides that the Parties shall protect confidential and classified information received pursuant to the Treaty, and that this obligation would continue even in the event that the Treaty is terminated.

30. Article 5 provides that intellectual property arising out of implementation of the Treaty shall be regulated under a separate arrangement.

31. Article 6(1) and 6(2) covers the implementing mechanism for the Treaty and provides that the Parties shall take any necessary steps to ensure effective implementation of the Treaty, including through the conclusion of separate arrangements on specific areas of

cooperation. The Australia-Indonesia Ministerial Forum shall review and give direction to the activities under the Treaty.

32. Article 7 provides that any expenses incurred in the implementation of this Treaty will be met by the Party incurring the expense, unless otherwise mutually decided.

33. Article 8 provides that disputes arising out of the implementation of the Treaty shall be settled by mutual consultation and negotiation.

34. Article 9 provides that the Treaty may be amended in writing by mutual consent.

35. Article 10 provides that the Treaty will enter into force when both Parties have notified each other that their internal requirements for entry into force have been fulfilled and that the Agreement shall remain in force until six months after one Party gives written notice to terminate it.

### **Implementation**

36. As the obligations imposed upon Australia by the Treaty relate to the general conduct of relations with other States, no changes to Australian legislation are required to implement the provisions of the Treaty.

### **Costs**

The costs associated with Australia's ratification of the Treaty are nil.

### **Regulation Impact Statement**

38. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

## **Future treaty action**

39. Article 9 of the Treaty provides that the Agreement may be amended in writing by mutual consent by both Parties. Any amendment to the Treaty shall come into force on the date of later notification by either Party of the completion of its ratification procedures for the amendment.

40. Future treaty action, including any amendments to the Treaty, would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

41. Article 6 of the Treaty provides for the possible conclusion of separate agreements on specific areas of cooperation pursuant to the Treaty.

## **Withdrawal or denunciation**

42. Article 10(2) provides that the Treaty shall remain in force until one Party gives written notice of its intention to terminate it, in which case the Treaty shall terminate six months after receipt of the notice of termination.

43. Withdrawal or denunciation by Australia would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

## **Contact details**

Indonesia Political and Strategic Section  
South and South-East Asia Division  
Department of Foreign Affairs and Trade

**Agreement between Australia and the Republic of  
Indonesia on the Framework for Security Cooperation  
(Mataram, Lombok, 13 November 2006)**

**[2006] ATNIF 25**

**CONSULTATION**

1. The Treaty concerns Australia's relations with Indonesia. It is therefore primarily a matter of foreign policy, and the Minister for Foreign Affairs and his Department have taken the lead in the negotiations with Indonesia which led to the Australian Government's decision to sign the Treaty, following agreement by the Prime Minister and relevant Australian Government Ministers.

2. Notwithstanding the fact that the Treaty does not directly affect State and Territory Governments, State and Territory Governments of Australia are being consulted through the Commonwealth, States and Territories Standing Committee mechanism on aspects of the Treaty which relate to their areas of responsibility and activities, such as law enforcement and people-to-people linkages.

## **Political Brief on Indonesia**

### **Political Overview**

1. The Republic of Indonesia is a unitary state, headed by an executive president who is elected for a five-year term, together with a vice-president. The directly-elected president governs with the assistance of an appointed cabinet. The 678-member People's Consultative Assembly (MPR) includes a 550-person House of Representatives (DPR) and a legislative body, the House of Regional Representatives (DPD), which consists of representatives from Indonesia's 33 provinces. The DPD oversees legislation affecting regional issues, but cannot veto legislation.
2. The fall of the Suharto Government in May 1998, after 32 years of rule, precipitated a significant political transformation in Indonesia. Since that time, there have been major changes to governance as Indonesia has transitioned to a democratic and decentralised state. Key milestones in this transition were the 2004 presidential and parliamentary elections. The presidential elections were the first direct election of the President and Vice-President by popular vote. Susilo Bambang Yudhoyono was inaugurated as Indonesia's sixth President on 20 October 2004 following the second round of voting in which he won 60 per cent of the vote. Direct elections at the provincial, municipal and sub-regional levels are ongoing and are deepening the democratic roots of Indonesian politics.
3. President Yudhoyono's Administration has implemented a number of significant economic and administrative reforms (such as reducing fuel subsidies in 2005), and has a good record of arresting and convicting terrorists, strengthening civilian government control over the military, and fighting corruption. His administration has also renewed focus on the established symbols of national unity in Indonesia, especially the national philosophy (the Pancasila - which enshrines tolerance, pluralism and diversity, including religious diversity). One of President Yudhoyono's major achievements since gaining office has been the peace agreement signed with Aceh separatists in August 2005. President Yudhoyono signed the Law on Governing Aceh on 1 August 2006 paving the way for local elections on 11 December 2006. President Yudhoyono has also renewed the government's attention on advancing the development of the province of Papua and has stated publicly his commitment to achieving full implementation of Special Autonomy Law.

## **Economic Overview**

4. Indonesia's GDP grew at 5.6 per cent in 2005. The Government's GDP growth target for 2006 is 5.6 per cent and for 2007 is 6.3 per cent. Employment generation is a major challenge for Indonesia. Foreign investor sentiment towards Indonesia has improved with the election of President Yudhoyono and his government's determination to improve economic growth and the investment climate, including by improving infrastructure, strengthening the legal and regulatory framework, enhancing governance and reducing fuel subsidies. Indonesia faces major reform and structural challenges. The Indonesian Government has released three well-targeted policy reform packages in 2006 covering infrastructure, investment and the finance sector.

## **Australia-Indonesia Relations**

5. Australia's bilateral relationship with Indonesia has developed considerably in recent years. Australia and Indonesia work closely on a range of important bilateral, regional and multilateral issues, including counter terrorism, people smuggling, illegal fishing, avian influenza and on emergency response and management. Bilateral cooperation reflects a number of important shared interests, our geographical proximity, extensive and long-standing people-to-people links, and is underpinned by frequent two-way high-level visits. President Yudhoyono's visit to Australia in April 2005 was a landmark in the relationship. During the visit, President Yudhoyono and the Prime Minister signed a Joint Declaration on a Comprehensive Partnership.

6. In 2006, the bilateral relationship was strengthened further by the meeting between Prime Minister Howard and President Yudhoyono on 26 June 2006, the 8<sup>th</sup> Australia-Indonesia Ministerial Forum (AIMF) in late June, and the signature of the Australia-Indonesia Agreement on the Framework for Security Cooperation (also known as the 'Treaty of Lombok') on 13 November 2006. The Agreement would strengthen further existing broad-based bilateral cooperation to combat terrorism and other forms of transnational crime and non-traditional security threats, especially in areas such as people smuggling, narcotics, money laundering, aviation and maritime security, and outbreaks of disease. In 2007, Australia and Indonesia will co-host, in furtherance of the objectives of the Treaty of Lombok,

a sub-regional ministerial meeting on counter-terrorism and a regional meeting on illegal fishing.

7. The trade and investment relationship is significant. Total two-way trade between Australia and Indonesia reached \$10 billion in 2005-06, up from \$8.6 billion the previous financial year, with Indonesia ranked as Australia's 13<sup>th</sup> largest trading. Investment levels remain modest, though some 400 Australian firms are operating in Indonesia. Over 16,000 Indonesian students were enrolled to study in Australia in 2005. The annual Australia-Indonesia Trade Ministers' meeting held in Canberra on 10 August 2006 reviewed implementation of the Australia-Indonesia Trade and Investment Framework (TIF) agreed in September 2005.

8. Australia is committed to providing ongoing assistance for Indonesia's economic and social development. In 2006-07, Indonesia is Australia's largest bilateral overseas development assistance recipient. Under the Australia-Indonesia Partnership, which includes the \$1 billion committed by Australia following the Indian Ocean tsunami on 26 December 2004, Australia is providing funds to help rebuild communities in Aceh and in other disaster affected areas, and to promote economic growth across Indonesia.



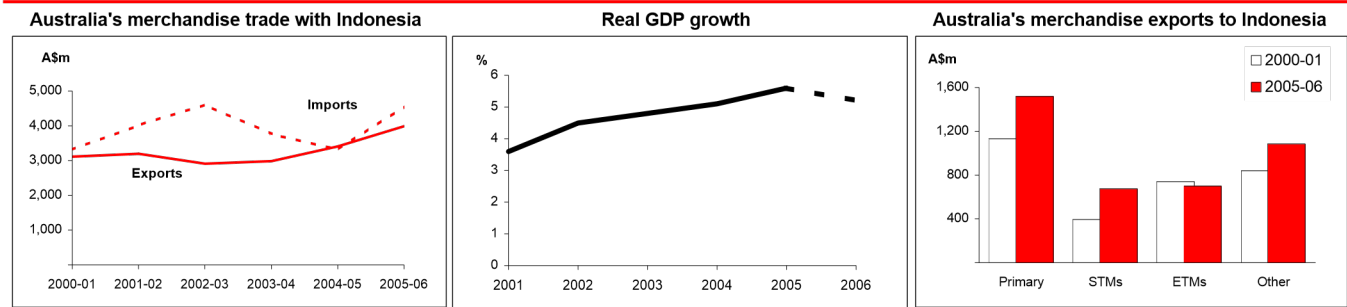


# INDONESIA

General information:

Fact sheets are updated biannually; M

Goods & services exports (% GDP):	39.1	33.7	29.7	32.5	35.3	31.9
Inflation (% change YOY):	11.5	11.8	6.8	6.1	10.5	13.0



## Australia's trade relationship with Indonesia (d):

### Australian merchandise trade with Indonesia, 2005-06:

Exports to Indonesia (A\$m):	3,983	<b>Total share:</b>	2.6%	<b>Rank:</b>	11th	<b>Growth (yoy):</b>	16.9%	
Imports from Indonesia (A\$m):	4,554		2.7%		12th		37.5%	
<b>Capital:</b>	Jakarta	<b>Head of State and Head of Government:</b>						

<b>Surface area:</b>	1,905 thousand sq km	H.E. President Dr Susilo Bambang Yudhoyono
<b>Official language:</b>	Bahasa Indonesia	
<b>Population:</b>	219.2 million (2005)	
<b>Exchange rate:</b>	A\$1 = 6,929.73 Rupiah (Sept 2006)	

<u>Recent economic indicators:</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005(a)</u>	<u>2006(b)</u>
GDP (US\$bn) (current prices):	160.7	195.6	234.8	254.5	281.3	351.0
GDP PPP (US\$bn) (c):	734.8	780.3	835.0	900.9	977.4	1,055.3
GDP per capita (US\$):	773	928	1,100	1,176	1,283	1,581
GDP per capita PPP (US\$) (c):	3,534	3,703	3,910	4,164	4,459	4,753
Real GDP growth (% change YOY):	3.6	4.5	4.8	5.1	5.6	5.2
Current account balance (US\$m):	6,901	7,822	8,111	1,564	929	659
Current account balance (% GDP):	4.3	4.0	3.5	0.6	0.3	0.2
					<b>Rank:</b>	
		3,983		2.6%	11th	16.9%
Total trade (exports + imports) (A\$m):		8,537		2.7%	13th	27.1%

<b>Major Australian merch. exports*, 2005-06 (A\$m):</b>		<b>(A\$m): Major Australian merch. imports, 2005-06</b>
Crude petroleum 455	Crude petroleum 2,109	Aluminium 330
Paper & paperboard 116	Live animals	Non-monetary gold 610
		Cotton 222
		Wood, simply worked 101

\*Includes A\$1bn of confidential items, mainly wheat & sugar, of 27% total exports.

<b>Australia's trade in services with Indonesia, 2005-06:</b>		<b>Total share:</b>
Exports of services to Indonesia (A\$m):	842	2.0%
Imports of services from Indonesia (A\$m):	676	1.6%

<b>Major Australian service exports 2005-06 (A\$m):</b>		<b>Major Australian service imports, 2005-06 (A\$m):</b>	
Education-related travel	475	Personal travel excl. education	397
Personal travel excl. education	152	Transportation	151

## Indonesia's global merchandise trade relationships:

Indonesia's principal export destinations, 2005:

Indonesia's principal import sources, 2005:

1	Japan	21.1%	1	Singapore	16.4%
2	United States	11.5%	2	Japan	12.0%
3	Singapore	9.2%	3	China	10.1%
11	<i>Australia</i>	2.6%	8	<i>Australia</i>	4.5%

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*Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.*

(a) all recent data subject to revision; (b) IMF/EIU forecast; (c) PPP is purchasing power parity; (d) Total may not add due to rounding.

## **Other treaties with Indonesia**

- Agreement between Australia, Canada, India, New Zealand, Pakistan and the United Kingdom, and the Republic of Indonesia, respecting the War Graves, Cemeteries, Graves and Memorials of the British Commonwealth in Indonesian Territory  
**[1964] ATS 12**
- Cultural Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia  
**[1968] ATS 12**
- Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia for Air Services Between and Beyond Their Territories **[1969] ATS 4**
- Trade Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia, and Agreed Minute **[1973] ATS 23**
- Agreement with the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries **[1973] ATS 31**
- Exchange of Notes constituting an Agreement between Australia and the Republic of Indonesia to amend the Annex to the Agreement for Air Services Between and Beyond Their Territories of 7 March 1969 **[1986] ATS 23**
- Agreement between the Government of Australia and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income **[1992] ATS 40**
- Agreement between the Government of Australia and the Government of the Republic of Indonesia relating to Cooperation in Fisheries **[1993] ATS 18**

- Agreement between Australia the Republic of Indonesia concerning the Promotion and Protection of Investments **[1993] ATS 19**
- Agreement between the Government of Australia and the Government of the Republic of Indonesia concerning the Protection and Enforcement of Copyright **[1993] ATS 25**
- Extradition Treaty between Australia and the Republic of Indonesia **[1995] ATS 7**
- Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters, with annex **[1999] ATS 10**
- General Agreement between the Government of Australia and the Government of the Republic of Indonesia on Development Cooperation **[1999] ATS 13**
- Agreement between the Government of Australia and the Government of the Republic of Indonesia Establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries **[1997] ATNIF 4**
- Agreement between the Government of Australia and the Government of the Republic of Indonesia concerning Cooperation in Nuclear Science and Technology **[1997] ATNIF 9**
- Agreement with the Government of the Republic of Indonesia for Cooperation in Scientific Research and Technological Development **[2005] ATNIF 11**

**There are no treaties of the same type with other countries**

December 2006

UNDANG-UNDANG REPUBLIK INDONESIA  
NOMOR 43 TAHUN 2008  
TENTANG  
WILAYAH NEGARA

DENGAN RAHMAT TUHAN YANG MAHA ESA

PRESIDEN REPUBLIK INDONESIA,

- Menimbang: a. bahwa Negara Kesatuan Republik Indonesia sebagai negara kepulauan yang berciri nusantara mempunyai kedaulatan atas wilayahnya serta memiliki hak-hak berdaulat di luar wilayah kedaulatannya dan kewenangan tertentu lainnya untuk dikelola dan dimanfaatkan sebesar-besarnya bagi kesejahteraan dan kemakmuran rakyat Indonesia sebagaimana diamanatkan dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;
- b. bahwa pengaturan mengenai wilayah negara meliputi wilayah daratan, perairan pedalaman, perairan kepulauan dan laut teritorial beserta dasar laut, dan tanah di bawahnya, serta ruang udara di atasnya, termasuk seluruh sumber kekayaan yang terkandung di dalamnya;
- c. bahwa pengaturan wilayah negara sebagaimana dimaksud dalam huruf b dilakukan untuk memberikan kepastian hukum dan kejelasan kepada warga negara mengenai wilayah negara;
- d. bahwa berdasarkan pertimbangan sebagaimana dimaksud dalam huruf a, huruf b, dan huruf c, perlu membentuk Undang-Undang tentang Wilayah Negara;

Mengingat: Pasal 20, Pasal 21, dan Pasal 25A Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;

Dengan Persetujuan Bersama  
DEWAN PERWAKILAN RAKYAT REPUBLIK  
INDONESIA dan  
PRESIDEN REPUBLIK INDONESIA

## MEMUTUSKAN:

Menetapkan: UNDANG-UNDANG TENTANG WILAYAH NEGARA.

### BAB I KETENTUAN UMUM

#### Pasal 1

#### Dalam

Undang-Undang ini yang dimaksud dengan:

1. Wilayah Negara Kesatuan Republik Indonesia, yang selanjutnya disebut dengan Wilayah Negara adalah salah satu unsur negara yang merupakan satu kesatuan wilayah daratan, perairan pedalaman, perairan kepulauan dan laut teritorial beserta dasar laut dan tanah di bawahnya, serta ruang udara di atasnya, termasuk seluruh sumber kekayaan yang terkandung di dalamnya.
2. Wilayah Perairan adalah perairan pedalaman, perairan kepulauan, dan laut teritorial.
3. Wilayah Yurisdiksi adalah wilayah di luar Wilayah Negara yang terdiri atas Zona Ekonomi Eksklusif, Landas Kontinen, dan Zona Tambahan di mana negara memiliki hak-hak berdaulat dan kewenangan tertentu lainnya sebagaimana diatur dalam peraturan perundang-undangan dan hukum internasional.
4. Batas Wilayah Negara adalah garis batas yang merupakan pemisah kedaulatan suatu negara yang didasarkan atas hukum internasional.
5. Batas Wilayah Yurisdiksi adalah garis batas yang merupakan pemisah hak berdaulat dan kewenangan tertentu yang dimiliki oleh negara yang didasarkan atas ketentuan peraturan perundang-undangan dan hukum internasional.
6. Kawasan Perbatasan adalah bagian dari Wilayah Negara yang terletak pada sisi dalam sepanjang batas wilayah Indonesia dengan negara lain, dalam hal Batas Wilayah Negara di darat, Kawasan Perbatasan berada di kecamatan.
7. Zona Tambahan Indonesia adalah zona yang lebarnya tidak melebihi 24 (dua puluh empat) mil laut yang diukur dari garis pangkal dari mana lebar laut teritorial diukur.
8. Zona Ekonomi Eksklusif Indonesia adalah suatu area di luar dan berdampingan dengan laut teritorial Indonesia sebagaimana dimaksud dalam Undang-Undang yang mengatur mengenai perairan Indonesia dengan batas terluar 200 (dua ratus) mil laut dari garis pangkal dari mana lebar laut teritorial diukur.

9. Landas Kontinen Indonesia adalah meliputi dasar laut dan tanah di bawahnya dari area di bawah permukaan laut yang terletak di luar laut teritorial, sepanjang kelanjutan alamiah wilayah daratan hingga pinggirannya luar tepi kontinen, atau hingga suatu jarak 200 (dua ratus) mil laut dari garis pangkal dari mana lebar laut teritorial diukur, dalam hal pinggirannya luar tepi kontinen tidak mencapai jarak tersebut, hingga paling jauh 350 (tiga ratus lima puluh) mil laut sampai dengan jarak 100 (seratus) mil laut dari garis kedalaman 2.500 (dua ribu lima ratus) meter.
10. Perjanjian Internasional adalah perjanjian dalam bentuk dan nama tertentu yang diatur dalam hukum internasional yang dibuat secara tertulis serta menimbulkan hak dan kewajiban di bidang hukum publik.
11. Badan Pengelola adalah badan yang diberi kewenangan oleh Undang-Undang ini di bidang pengelolaan Batas Wilayah Negara dan Kawasan Perbatasan.
12. Pemerintah Pusat, yang selanjutnya disebut Pemerintah adalah Presiden Republik Indonesia yang memegang kekuasaan pemerintahan negara Republik Indonesia sebagaimana dimaksud dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
13. Pemerintah Daerah adalah Gubernur, Bupati, atau Walikota, dan perangkat daerah sebagai unsur penyelenggara pemerintahan daerah.

## BAB II ASAS DAN TUJUAN

### Pasal 2 Pengaturan

Wilayah Negara dilaksanakan berdasarkan asas: a.

- kedaulatan;
- b. kebangsaan;
- c. kenusantaraan;
- d. keadilan;
- e. keamanan;
- f. ketertiban dan kepastian hukum;
- g. kerja sama;
- h. kemanfaatan; dan
- i. pengayoman.

### Pasal 3

Pengaturan Wilayah Negara bertujuan:

- a. menjamin keutuhan Wilayah Negara, kedaulatan negara, dan ketertiban di Kawasan Perbatasan demi kepentingan kesejahteraan segenap bangsa;
- b. menegakkan kedaulatan dan hak-hak berdaulat; dan
- c. mengatur pengelolaan dan pemanfaatan Wilayah Negara dan Kawasan Perbatasan, termasuk pengawasan batas-batasnya.

## BAB III RUANG LINGKUP WILAYAH NEGARA

### Bagian Kesatu Umum

#### Pasal 4

Wilayah Negara meliputi wilayah darat, wilayah perairan, dasar laut, dan tanah di bawahnya serta ruang udara di atasnya, termasuk seluruh sumber kekayaan yang terkandung di dalamnya.

### Bagian Kedua Batas Wilayah

#### Pasal 5

Batas Wilayah Negara di darat, perairan, dasar laut dan tanah di bawahnya serta ruang udara di atasnya ditetapkan atas dasar perjanjian bilateral dan/atau trilateral mengenai batas darat, batas laut, dan batas udara serta berdasarkan peraturan perundang-undangan dan hukum internasional.

#### Pasal 6

(1) Batas Wilayah Negara sebagaimana dimaksud dalam Pasal 5, meliputi:

- a. di darat berbatas dengan Wilayah Negara: Malaysia, Papua Nugini, dan Timor Leste;
- b. di laut berbatas dengan Wilayah Negara: Malaysia, Papua Nugini, Singapura, dan Timor Leste; dan
- c. di udara mengikuti batas kedaulatan negara di darat dan di laut, dan batasnya dengan angkasa luar ditetapkan berdasarkan perkembangan hukum internasional.



- (2) Batas Wilayah Negara sebagaimana dimaksud pada ayat (1), termasuk titik-titik koordinatnya ditetapkan berdasarkan perjanjian bilateral dan/atau trilateral.
- (3) Dalam hal Wilayah Negara tidak berbatasan dengan negara lain, Indonesia menetapkan Batas Wilayah Negara secara unilateral berdasarkan peraturan perundang-undangan dan hukum internasional.

## BAB IV HAK-HAK BERDAULAT

### Bagian Kesatu Umum

#### Pasal 7

Negara Indonesia memiliki hak-hak berdaulat dan hak-hak lain di Wilayah Yurisdiksi yang pelaksanaannya sesuai dengan ketentuan peraturan perundang-undangan dan hukum internasional.

### Bagian Kedua Batas Wilayah Yurisdiksi

#### Pasal 8

- (1) Wilayah Yurisdiksi Indonesia berbatas dengan wilayah yurisdiksi Australia, Filipina, India, Malaysia, Papua Nugini, Palau, Thailand, Timor Leste, dan Vietnam.
- (2) Batas Wilayah Yurisdiksi sebagaimana dimaksud pada ayat (1) termasuk titik-titik koordinatnya ditetapkan berdasarkan perjanjian bilateral dan/atau trilateral.
- (3) Dalam hal Wilayah Yurisdiksi tidak berbatasan dengan negara lain, Indonesia menetapkan Batas Wilayah Yurisdiksinya secara unilateral berdasarkan ketentuan peraturan perundang-undangan dan hukum internasional.

## BAB V KEWENANGAN

#### Pasal 9

Pemerintah dan pemerintah daerah berwenang mengatur pengelolaan dan pemanfaatan Wilayah Negara dan Kawasan Perbatasan.

## Pasal 10

- (1) Dalam pengelolaan Wilayah Negara dan Kawasan Perbatasan, Pemerintah berwenang:
  - a. menetapkan kebijakan pengelolaan dan pemanfaatan Wilayah Negara dan Kawasan Perbatasan;
  - b. mengadakan perundingan dengan negara lain mengenai penetapan Batas Wilayah Negara sesuai dengan ketentuan peraturan perundang-undangan dan hukum internasional;
  - c. membangun atau membuat tanda Batas Wilayah Negara;
  - d. melakukan pendataan dan pemberian nama pulau dan kepulauan serta unsur geografis lainnya;
  - e. memberikan izin kepada penerbangan internasional untuk melintasi wilayah udara teritorial pada jalur yang telah ditentukan dalam peraturan perundang-undangan;
  - f. memberikan izin lintas damai kepada kapal-kapal asing untuk melintasi laut teritorial dan perairan kepulauan pada jalur yang telah ditentukan dalam peraturan perundang-undangan;
  - g. melaksanakan pengawasan di zona tambahan yang diperlukan untuk mencegah pelanggaran dan menghukum pelanggar peraturan perundang-undangan di bidang bea cukai, fiskal, imigrasi, atau saniter di dalam Wilayah Negara atau laut teritorial;
  - h. menetapkan wilayah udara yang dilarang dilintasi oleh penerbangan internasional untuk pertahanan dan keamanan;
  - i. membuat dan memperbarui peta Wilayah Negara dan menyampaikannya kepada Dewan Perwakilan Rakyat sekurang-kurangnya setiap 5 (lima) tahun sekali; dan
  - j. menjaga keutuhan, kedaulatan, dan keamanan Wilayah Negara serta Kawasan Perbatasan.
- (2) Dalam rangka melaksanakan ketentuan sebagaimana dimaksud pada ayat (1), Pemerintah berkewajiban menetapkan biaya pembangunan Kawasan Perbatasan.
- (3) Dalam rangka menjalankan kewenangannya, Pemerintah dapat menugasi pemerintah daerah untuk menjalankan kewenangannya dalam rangka tugas pembantuan sesuai dengan peraturan perundang-undangan.

## Pasal 11

- (1) Dalam pengelolaan Wilayah Negara dan Kawasan Perbatasan, Pemerintah Provinsi berwenang:
  - a. melaksanakan kebijakan Pemerintah dan menetapkan kebijakan lainnya dalam rangka otonomi daerah dan tugas pembantuan;
  - b. melakukan koordinasi pembangunan di Kawasan Perbatasan;
  - c. melakukan pembangunan Kawasan Perbatasan antar-pemerintah daerah dan/atau antara pemerintah daerah dengan pihak ketiga; dan
  - d. melakukan pengawasan pelaksanaan pembangunan Kawasan Perbatasan yang dilaksanakan Pemerintah Kabupaten/Kota.
- (2) Dalam rangka melaksanakan ketentuan sebagaimana dimaksud pada ayat (1), Pemerintah Provinsi berkewajiban menetapkan biaya pembangunan Kawasan Perbatasan.

#### Pasal 12

- (1) Dalam pengelolaan Wilayah Negara dan Kawasan Perbatasan, Pemerintah Kabupaten/Kota berwenang:
  - a. melaksanakan kebijakan Pemerintah dan menetapkan kebijakan lainnya dalam rangka otonomi daerah dan tugas pembantuan;
  - b. menjaga dan memelihara tanda batas;
  - c. melakukan koordinasi dalam rangka pelaksanaan tugas pembangunan di Kawasan Perbatasan di wilayahnya; dan
  - d. melakukan pembangunan Kawasan Perbatasan antar-pemerintah daerah dan/atau antara pemerintah daerah dengan pihak ketiga.
- (2) Dalam rangka melaksanakan ketentuan sebagaimana dimaksud pada ayat (1), Pemerintah Kabupaten/Kota berkewajiban menetapkan biaya pembangunan Kawasan Perbatasan.

#### Pasal 13

Pelaksanaan kewenangan sebagaimana dimaksud dalam Pasal 10, Pasal 11, dan Pasal 12 diatur lebih lanjut dengan Peraturan Pemerintah.

## BAB VI KELEMBAGAAN

#### Pasal 14

- (1) Untuk mengelola Batas Wilayah Negara dan mengelola Kawasan Perbatasan pada tingkat pusat dan daerah, Pemerintah dan pemerintah daerah membentuk Badan Pengelola nasional dan Badan Pengelola daerah.
- (2) Badan Pengelola sebagaimana dimaksud pada ayat (1) dipimpin oleh seorang kepala badan yang bertanggung jawab kepada Presiden atau kepala daerah sesuai dengan kewenangannya.
- (3) Keanggotaan Badan Pengelola berasal dari unsur Pemerintah dan pemerintah daerah yang terkait dengan perbatasan Wilayah Negara.

#### Pasal 15

- (1) Badan Pengelola bertugas:
  - a. menetapkan kebijakan program pembangunan perbatasan;
  - b. menetapkan rencana kebutuhan anggaran;
  - c. mengoordinasikan pelaksanaan; dan
  - d. melaksanakan evaluasi dan pengawasan.
- (2) Pelaksana teknis pembangunan dilakukan oleh instansi teknis sesuai dengan tugas pokok dan fungsinya.

#### Pasal 16

Hubungan kerja antara Badan Pengelola nasional dan Badan Pengelola daerah merupakan hubungan koordinatif.

#### Pasal 17

Dalam melaksanakan tugasnya, Badan Pengelola dibantu oleh sekretariat tetap yang berkedudukan di kementerian yang tugas dan tanggung jawabnya di bidang pemerintahan dalam negeri.

#### Pasal 18

- (1) Ketentuan lebih lanjut mengenai kedudukan, tugas, fungsi, dan susunan organisasi, serta tata kerja Badan Pengelola dan sekretariat tetap di tingkat pusat diatur dengan Peraturan Presiden.
- (2) Ketentuan lebih lanjut mengenai kedudukan, tugas, fungsi, dan susunan organisasi, serta tata kerja Badan Pengelola di tingkat daerah diatur dengan peraturan daerah.

## BAB VII PERAN SERTA MASYARAKAT

### Pasal 19

- (1) Peran serta masyarakat dalam pengelolaan Kawasan Perbatasan dilakukan dalam bentuk:
  - a. mengembangkan pembangunan Kawasan Perbatasan; dan
  - b. menjaga serta mempertahankan Kawasan Perbatasan.
- (2) Untuk melaksanakan ketentuan sebagaimana dimaksud pada ayat (1), Pemerintah dapat melibatkan masyarakat untuk ikut berperan serta dalam pengelolaan Kawasan Perbatasan.
- (3) Peran serta masyarakat sebagaimana dimaksud pada ayat (1) dilaksanakan sesuai dengan ketentuan peraturan perundang-undangan.

## BAB VIII LARANGAN

### Pasal 20

- (1) Setiap orang dilarang melakukan upaya menghilangkan, merusak, mengubah, atau memindahkan tanda-tanda batas negara, atau melakukan pengurangan luas Wilayah Negara.
- (2) Setiap orang dilarang menghilangkan, merusak, mengubah, memindahkan tanda-tanda batas atau melakukan tindakan lain yang mengakibatkan tanda-tanda batas tersebut tidak berfungsi.

## BAB IX KETENTUAN PIDANA

### Pasal 21

- (1) Setiap orang yang melanggar ketentuan sebagaimana dimaksud dalam Pasal 20 ayat (1) dipidana dengan pidana penjara paling singkat 2 (dua) tahun dan paling lama 10 (sepuluh) tahun dan pidana denda paling sedikit Rp2.000.000.000,00 (dua miliar rupiah) dan paling banyak Rp10.000.000.000,00 (sepuluh miliar rupiah).
- (2) Setiap orang yang melanggar ketentuan sebagaimana dimaksud dalam Pasal 20 ayat (2) dipidana dengan pidana penjara paling singkat 3 (tiga) tahun dan paling lama 15 (lima belas) tahun dan pidana denda paling sedikit Rp5.000.000.000,00 (lima miliar rupiah) dan paling banyak Rp20.000.000.000,00 (dua puluh miliar rupiah).

- (3) Dalam hal pelanggaran ketentuan sebagaimana dimaksud dalam Pasal 20 ayat (1) dan ayat (2) dilakukan oleh korporasi, dipidana dengan pidana denda ditambah 1/3 (sepertiga) dari jumlah denda sebagaimana dimaksud pada ayat (1) atau ayat (2).
- (4) Selain pidana denda sebagaimana dimaksud pada ayat (3), korporasi dijatuhi pidana tambahan berupa pencabutan izin usaha.

## BAB X KETENTUAN LAIN-LAIN

### Pasal 22

Negara Indonesia berhak melakukan pengelolaan dan pemanfaatan kekayaan alam dan lingkungan laut di laut bebas serta dasar laut internasional yang dilaksanakan sesuai dengan ketentuan peraturan perundang-undangan dan hukum internasional.

## BAB XI KETENTUAN PERALIHAN

### Pasal 23

Pada saat berlakunya Undang-Undang ini, semua peraturan perundang-undangan yang berkaitan dengan Batas Wilayah Negara dan Batas Wilayah Yurisdiksi tetap berlaku sepanjang tidak bertentangan atau belum diganti dengan yang baru berdasarkan Undang-Undang ini.

## BAB XII KETENTUAN PENUTUP

### Pasal 24

Badan Pengelola sebagaimana dimaksud dalam Pasal 14 dan Pasal 15 harus sudah terbentuk dalam waktu paling lambat 6 (enam) bulan setelah Undang-Undang ini diundangkan.

### Pasal 25

Perjanjian internasional sebagai hasil perundingan mengenai Batas Wilayah Negara serta Batas Wilayah Yurisdiksi di laut menjadi bagian yang tidak terpisahkan dari Undang-Undang ini.

Pasal 26 Undang-Undang ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Undang-Undang ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Disahkan di Jakarta  
pada tanggal 14 November 2008  
PRESIDEN REPUBLIK INDONESIA,  
  
DR. H. SUSILO BAMBANG  
YUDHOYONO

Diundangkan di Jakarta  
pada tanggal 14 November 2008  
MENTERI HUKUM DAN HAK ASASI MANUSIA  
REPUBLIK INDONESIA,  
  
ANDI MATTALATTA

LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 2008 NOMOR 177.

PENJELASAN  
ATAS  
UNDANG-UNDANG REPUBLIK INDONESIA  
NOMOR 43 TAHUN  
TENTANG  
WILAYAH NEGARA

I. UMUM

Negara Kesatuan Republik Indonesia sebagai negara kepulauan yang berciri nusantara mempunyai kedaulatan atas wilayah serta memiliki hak-hak berdaulat di luar wilayah

kedaulatannya untuk dikelola dan dimanfaatkan sebesar-besarnya bagi kemakmuran rakyat Indonesia sebagaimana diamanatkan dalam pembukaan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 25A mengamanatkan bahwa Negara Kesatuan Republik Indonesia adalah sebuah negara kepulauan yang berciri Nusantara dengan wilayah yang batas-batas dan hak-haknya ditetapkan dengan undang-undang.

Bahwa wilayah negara sebagaimana dimaksud dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 menganut sistem:

- a. pengaturan suatu Pemerintahan negara Indonesia yang melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia;
- b. pemanfaatan bumi, air, dan udara serta kekayaan alam yang terkandung di dalamnya untuk sebesar-besarnya kemakmuran rakyat;
- c. desentralisasi pemerintahan kepada daerah-daerah besar dan kecil yang bersifat otonom dalam bingkai Negara Kesatuan Republik Indonesia; dan
- d. kesejahteraan sosial bagi seluruh rakyat Indonesia.

Dalam rangka mengejawantahkan maksud Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 tersebut diperlukan pengaturan-pengaturan kewilayahan secara nasional, antara lain pengaturan mengenai:

- a. perairan;
- b. daratan/tanah;
- c. udara;
- d. ruang; dan
- e. sumber kekayaan alam dan lingkungannya.

Mengingat sisi terluar dari wilayah negara atau yang dikenal dengan Kawasan Perbatasan merupakan kawasan strategis dalam menjaga integritas Wilayah Negara, maka diperlukan juga pengaturan secara khusus.

Pengaturan batas-batas Wilayah Negara dimaksudkan untuk memberikan kepastian hukum mengenai ruang lingkup wilayah negara, kewenangan pengelolaan Wilayah Negara, dan hak-hak berdaulat. Negara berkepentingan untuk ikut mengatur pengelolaan dan pemanfaatan di laut bebas dan dasar laut internasional sesuai dengan hukum internasional.



Pemanfaatan di laut bebas dan di dasar laut meliputi pengelolaan kekayaan alam, perlindungan lingkungan laut dan keselamatan navigasi.

Pengelolaan Wilayah Negara dilakukan dengan pendekatan kesejahteraan, keamanan dan kelestarian lingkungan secara bersama-sama. Pendekatan kesejahteraan dalam arti upaya-upaya pengelolaan Wilayah Negara hendaknya memberikan manfaat sebesar-besarnya bagi peningkatan kesejahteraan masyarakat yang tinggal di Kawasan Perbatasan. Pendekatan keamanan dalam arti pengelolaan Wilayah Negara untuk menjamin keutuhan wilayah dan kedaulatan negara serta perlindungan segenap bangsa. Sedangkan pendekatan kelestarian lingkungan dalam arti pembangunan Kawasan Perbatasan yang memperhatikan aspek kelestarian lingkungan yang merupakan wujud dari pembangunan yang berkelanjutan.

Peran Pemerintah dan Pemerintah Daerah menjadi sangat penting terkait dengan pelaksanaan fungsifungsi pemerintahan sesuai dengan prinsip otonomi daerah dalam mengelola pembangunan Kawasan Perbatasan.

Peraturan perundang-undangan yang terkait dengan Wilayah Negara telah diatur dalam berbagai peraturan perundang-undangan, antara lain:

- a. Undang-Undang Nomor 2 Tahun 1971 tentang Perjanjian antara Republik Indonesia dan Malaysia tentang Penetapan Garis Batas Laut Wilayah kedua Negara di Selat Malaka;
- b. Undang-Undang Nomor 1 Tahun 1973 tentang Landas Kontinen Indonesia;
- c. Undang-Undang Nomor 6 Tahun 1973 tentang Perjanjian Antara Indonesia dan Australia Mengenai Garis-Garis Batas Tertentu Antara Indonesia dan Papua New Guinea;
- d. Undang-Undang Nomor 7 Tahun 1973 tentang Perjanjian antara Republik Indonesia dan Republik Singapura mengenai garis Batas laut Wilayah kedua Negara di Selat Singapura;
- e. Undang-Undang Nomor 5 Tahun 1983 tentang Zona Ekonomi Eksklusif Indonesia;
- f. Undang-Undang Nomor 17 Tahun 1985 tentang Pengesahan United Nations Convention on the Law of the Sea (Konvensi Perserikatan Bangsa-Bangsa Tentang Hukum Laut);
- g. Undang-Undang Nomor 6 Tahun 1996 tentang Perairan Indonesia;
- h. Undang-undang Nomor 18 Tahun 2007 tentang Pengesahan Persetujuan Antara Pemerintah Republik Indonesia Dan Pemerintah Republik Sosialis Vietnam tentang Penetapan Batas Landas Kontinen Tahun 2003;

- i. Keputusan Presiden Nomor 89 Tahun 1969 tentang Persetujuan Antara Pemerintah Republik Indonesia dan Pemerintah Malaysia tentang Penetapan Garis Batas Landas Kontinen Antara Kedua Negara;
- j. Keputusan Presiden Nomor 42 Tahun 1971 tentang Persetujuan Antara Pemerintah Republik Indonesia dan Pemerintah Commonwealth Australia tentang Penetapan Batas-Batas Dasar Laut Tertentu;
- k. Keputusan Presiden Nomor 20 Tahun 1972 tentang Persetujuan Antara Pemerintah Republik Indonesia, Pemerintah Malaysia dan Pemerintah Kerajaan Thailand tentang Penetapan Garis-Garis Batas Landas Kontinen di Bagian Utara Selat Malaka;
- l. Keputusan Presiden Nomor 21 Tahun 1972 tentang Persetujuan Antara Pemerintah Republik Indonesia dan Pemerintah Kerajaan Thailand tentang Penetapan Suatu Garis Batas Landas Kontinen di Bagian Utara Selat Malaka dan Laut Andaman;
- m. Keputusan Presiden Nomor 66 Tahun 1972 tentang Persetujuan Bersama Antara Pemerintah Republik Indonesia dan Pemerintah Commonwealth Australia tentang Penetapan Garis Batas Dasar Laut di Daerah Laut Timor dan Laut Arafura;
- n. Keputusan Presiden Nomor 51 Tahun 1974 tentang Persetujuan Antara Pemerintah Republik Indonesia dan Pemerintah Republik India tentang Penetapan Batas Landas Kontinen Antara Kedua Negara;
- o. Keputusan Presiden Nomor 1 Tahun 1977 tentang Persetujuan Antara Pemerintah Republik Indonesia dan Pemerintah Kerajaan Thailand tentang Penetapan Garis Batas dasar Laut Antara Kedua Negara di Laut Andaman;
- p. Keputusan Presiden Nomor 26 Tahun 1977 tentang Persetujuan Antara Pemerintah Republik Indonesia dan Pemerintah Republik India tentang Garis Batas Landas Kontinen Tahun 1974 Antara Kedua Negara di Laut Andaman dan Samudera Hindia;
- q. Keputusan Presiden Nomor 24 Tahun 1978 tentang Persetujuan Bersama Antara Pemerintah Republik Indonesia dan Pemerintah Republik India, dan Pemerintah Kerajaan Thailand tentang Penetapan Titik Pertemuan Tiga Garis Batas dan Penetapan Garis Batas Ketiga Negara di Laut Andaman; dan
- r. Keputusan Presiden Nomor 21 Tahun 1982 tentang Persetujuan Antara Pemerintah Republik Indonesia dan Pemerintah Papua Nugini tentang Batas-Batas Maritim Antara Pemerintah RI dan Papua Nugini dan Kerjasama tentang Masalah-Masalah Yang

Bersangkutan Sebagai Hasil Perundingan Antara Delegasi Pemerintah RI dan Delegasi Pemerintah Papua Nugini.

Mengingat Kawasan Perbatasan merupakan kawasan strategis dalam menjaga keutuhan Wilayah Negara maka diperlukan pengaturan secara tersendiri dalam Undang-Undang.

Pengaturan Batas Wilayah Negara dimaksudkan untuk memberikan kepastian hukum mengenai Wilayah Negara, kewenangan pengelolaan Wilayah Negara, dan hak-hak berdaulat. Hal-hal pokok yang diatur dalam undang-undang ini, yakni:

1. ruang lingkup Wilayah Negara yang meliputi wilayah daratan, wilayah perairan pedalaman, perairan kepulauan, laut teritorial, dasar laut, dan tanah di bawahnya, serta ruang udara di atasnya termasuk seluruh sumber kekayaan yang terkandung di dalamnya.
2. hak-hak berdaulat Negara Republik Indonesia di Zona Ekonomi Eksklusif dan Landas Kontinen serta hak pengawasan di Zona Tambahan.
3. kewenangan Pemerintah melakukan pengaturan pengelolaan dan pemanfaatan wilayah negara serta Kawasan Perbatasan.
4. Kelembagaan yang diberi kewenangan untuk melakukan penanganan Kawasan Perbatasan. Unsur keanggotaan kelembagaan ini berasal dari unsur Pemerintah dan Pemerintah Daerah mengingat posisi strategis wilayah perbatasan terkait dalam hal seperti kedaulatan negara, keutuhan wilayah, penegakan hukum dan kesejahteraan rakyat.
5. Keikutsertaan masyarakat dalam menjaga dan mempertahankan Wilayah Negara termasuk Kawasan Perbatasan.
6. Larangan dan sanksi bagi setiap orang yang melakukan pelanggaran terkait dengan Wilayah Negara dan batas-batasnya.

## II. PASAL DEMI PASAL

### Pasal 1

Cukup  
jelas

### Pasal 2

Huruf  
a

Yang dimaksud dengan "asas kedaulatan" adalah pengelolaan Wilayah Negara harus senantiasa memperhatikan kedaulatan Wilayah Negara demi tetap terjaganya keutuhan Wilayah Negara Kesatuan Republik Indonesia.

Huruf b

Yang dimaksud dengan "asas kebangsaan" adalah pengelolaan Wilayah Negara harus mencerminkan sifat dan watak bangsa Indonesia yang pluralistik atau kebhinekaan dengan tetap menjaga prinsip Negara Kesatuan Republik Indonesia.

Huruf c

Yang dimaksud dengan "asas kenusantaraan" adalah pengelolaan Wilayah Negara harus senantiasa memperhatikan kepentingan seluruh Wilayah Negara Indonesia.

Huruf d

Yang dimaksud dengan "asas keadilan" adalah pengelolaan Wilayah Negara harus mencerminkan keadilan secara proporsional bagi setiap warga negara tanpa kecuali.

Huruf e

Yang dimaksud dengan "asas keamanan" adalah suatu kondisi dinamis masyarakat sebagai salah satu prasyarat terselenggaranya proses pembangunan nasional dalam rangka tercapainya tujuan nasional.

Huruf f

Yang dimaksud dengan "asas ketertiban dan kepastian hukum" adalah pengelolaan Wilayah Negara harus menjamin terciptanya ketertiban dan kepastian hukum.

Huruf g

Yang dimaksud dengan "asas kerja sama" adalah pengelolaan Wilayah Negara harus dilakukan melalui kerja sama dari berbagai pemangku kepentingan.

Huruf h

Yang dimaksud dengan "asas kemanfaatan" adalah pengelolaan Wilayah Negara harus memberikan manfaat yang sebesar-besarnya bagi seluruh rakyat Indonesia.

Huruf i

Yang dimaksud dengan "asas pengayoman" adalah pengelolaan Wilayah Negara harus mengayomi kepentingan seluruh warga negara khususnya masyarakat di Kawasan Perbatasan.

Pasal 3

Cukup  
jelas

Pasal 4

Cukup  
jelas

Pasal 5

Cukup jelas

Pasal 6

Ayat (1)  
Huruf a

Batas Wilayah Negara di darat dalam ketentuan ini adalah batas-batas yang disepakati oleh Pemerintah Hindia Belanda dan Pemerintah Inggris di Kalimantan dan Papua, dan Pemerintah Portugis di Pulau Timor yang selanjutnya menjadi wilayah Indonesia berdasarkan prinsip uti possidetis juris yang berlaku dalam hukum internasional. Berdasarkan prinsip tersebut, negara yang merdeka mewarisi wilayah bekas negara penjajahnya.

Batas darat antara Indonesia dan Malaysia ditetapkan atas dasar Konvensi Hindia Belanda dan Inggris Tahun 1891, Tahun 1915, dan Tahun 1928.

Batas darat antara Indonesia dan Timor Leste ditetapkan atas dasar Konvensi tentang Penetapan Batas Hindia Belanda dan Portugal Tahun 1904 dan Keputusan Permanent Court of Arbitration (PCA) Tahun 1914.

Batas darat antara Indonesia dan Papua Nugini ditetapkan atas dasar Perjanjian Batas Hindia Belanda dan Inggris Tahun 1895.

Huruf b

Ketentuan ini dimaksudkan hanya untuk batas-batas laut wilayah (territorial water).

Huruf c

Cukup Jelas

Ayat (2)

Cukup Jelas

Ayat (3)

Penetapan Batas Wilayah Negara dilakukan melalui perjanjian bilateral dan/atau trilateral apabila terdapat dua atau tiga negara yang menyatakan pengakuan atas wilayah yang sama ataupun adanya kemungkinan tumpang-tindih pengakuan atas wilayah yang sama. Penetapan Batas Wilayah Negara dilakukan secara unilateral apabila tidak terdapat pengakuan atas wilayah yang sama ataupun tidak adanya kemungkinan tumpang-tindih pengakuan atas wilayah yang sama.

Pasal 7

Yang dimaksud dengan "hak-hak lain" seperti pencarian dan penguasaan harta karun dan riset kelautan.

Pasal 8

Ayat

(1)

Ketentuan ini dimaksudkan untuk batas-batas hak berdaulat atau Wilayah Yurisdiksi di Zona Tambahan, Zona Ekonomi Eksklusif, dan Landas Kontinen.

Ayat (2)

Cukup jelas

Ayat (3)

Cukup jelas

Pasal 9

Cukup jelas

Pasal 10

Ayat

(1)

Huruf a

Cukup jelas

Huruf b

Cukup jelas

Huruf c

Pembangunan dan pembuatan tanda batas wilayah negara tersebut dilakukan sesuai kesepakatan dengan negara yang berbatasan.

Huruf d

Cukup jelas

Huruf e

Cukup jelas

Huruf f

Cukup jelas

Huruf g

Cukup jelas

Huruf h

Cukup jelas

Huruf i

Cukup jelas

Huruf j

Cukup jelas

Ayat (2)

Cukup jelas

Ayat (3)

Cukup jelas

## Pasal 11

Ayat

(1)

Huruf a

Cukup jelas

Huruf b

Cukup jelas

Huruf c

Yang dimaksud dengan ketentuan ini adalah pembangunan Kawasan Perbatasan yang

bersifat lintas kabupaten atau lintas provinsi dan/atau melibatkan investasi swasta.

Huruf d

Cukup jelas

Ayat (2)

Cukup jelas

#### Pasal 12

Ayat

(1)

Huruf a

Cukup jelas

Huruf b Yang dimaksud dengan "menjaga dan memelihara tanda batas" tidak termasuk melakukan rekonstruksi atau memindahkan tanda batas.

Huruf c

Cukup jelas

Huruf d

Yang dimaksud dengan ketentuan ini adalah pembangunan Kawasan Perbatasan yang bersifat lintas kabupaten atau lintas provinsi dan/atau melibatkan investasi swasta.

Ayat (2)

Cukup jelas

#### Pasal 13

Cukup jelas

#### Pasal 14

Ayat

(1)

Badan Pengelola di tingkat daerah hanya dibentuk di daerah provinsi, kabupaten/kota yang memiliki Kawasan Perbatasan antarnegara.

Ayat (2)

Cukup jelas

Ayat (3)



Cukup jelas

Pasal 15  
Cukup  
jelas

Pasal 16  
Cukup  
jelas

Pasal 17  
Cukup  
jelas  
Pasal  
18  
Cukup jelas

Pasal 19  
Cukup jelas

Pasal 20  
Cukup jelas

Pasal 21  
Cukup jelas

Pasal 22  
Cukup jelas

Pasal 23  
Cukup jelas

Pasal 24  
Cukup jelas

Pasal 25  
Cukup jelas

Pasal 26

Cukup jelas

TAMBAHAN LEMBARAN NEGARA REPUBLIK INDONESIA NOMOR  
4925.



**JOINT DECLARATION ON MARITIME COOPERATION  
BETWEEN  
THE GOVERNMENT OF AUSTRALIA  
AND  
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA**

The Government of Australia and the Government of the Republic of Indonesia (hereinafter as “the Governments”) aspiring to a peaceful, secure and stable maritime domain in which people, commerce and the environment can flourish make the following joint declaration.

**Noting:**

1. the principles enshrined in the Joint Declaration on Comprehensive Partnership, signed on 4 April 2005 and the Agreement on the Framework for Security Cooperation (Lombok Treaty), signed in Lombok on 13 November 2006, including its Plan of Action;
2. the importance of maritime trade and the blue economy to our collective prosperity;
3. our shared interest in developing maritime connectivity; and
4. the strength of our ongoing maritime cooperation.

**Reaffirming:**

1. our commitment to unimpeded lawful commerce, freedom of navigation and overflight and sustainable use of living marine resources in accordance with international law;

2. our commitment to maintaining and promoting peace, security and stability in the region, full respect for legal and diplomatic processes, and to the peaceful resolution of maritime disputes in accordance with international law, including the UN Convention on the Law of the Sea; and
3. our commitment to addressing the challenges posed by transnational crime committed at sea.

The Governments will seek to deepen and broaden maritime cooperation with the following objectives:

1. to work together to improve the management and sustainability of living marine resources;
2. to continue to strengthen cooperation to combat illegal, unreported and unregulated fishing as well as crimes in the fisheries sector;
3. to promote development of improved maritime infrastructure and greater regional connectivity to help facilitate maritime trade, investment, services, and tourism;
4. to drive coastal economic growth by generating new employment through skill and capacity development;
5. to work together to strengthen the maritime security architecture in our region, including sharing of information relevant to the maintenance of maritime security;
6. to work together, including through bilateral and regional mechanisms, to improve maritime safety and to strengthen their commitment and efforts in preventing and responding to environmental threats caused by pollution in the marine environment;
7. to improve search and rescue coordination and communications, enhancing our ability to respond to aviation and maritime incidents in our seas, as well as disaster risk management;
8. to promote a secure port and ship security regulatory environment;
9. to strengthen navy-to-navy links, including through cooperative activities;
10. to build closer cooperation between our maritime civil law enforcement agencies through information sharing, capacity building and the conduct of bilateral cooperative activities;



11. to combat transnational organized crime committed at sea through closer cooperation and information sharing between law enforcement and justice agencies;
12. to build further cooperation on marine research and work together on marine science;
13. to strengthen education and research cooperation in the area of maritime safety and security, as well as sustainable development of the blue economy;
14. to work together to strengthen cooperation in the area of maritime cultural heritage in accordance with respective national policy, laws, and regulations; and
15. to work together in regional and multilateral fora to promote our joint maritime interests and commitments.

The Governments commit to develop a Plan of Action to support implementation of these objectives.

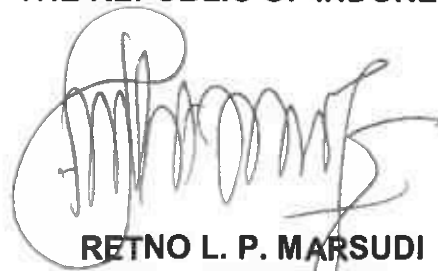
Signed in duplicate at Sydney on 26 February 2017 in the English and Indonesian languages, both texts having equal validity.

**FOR THE GOVERNMENT OF  
AUSTRALIA**



**JULIE BISHOP  
MINISTER FOR FOREIGN AFFAIRS**

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF INDONESIA**



**RETNO L. P. MARSUDI  
MINISTER FOR FOREIGN AFFAIRS**

# **Joint Declaration on a Comprehensive Strategic Partnership between Australia and the Republic of Indonesia<sup>194</sup>**

We, Indonesia and Australia, share a unique bond as neighbours at the maritime crossroads of the Indian and Pacific Oceans. Our historical ties are deep – from Makassan seafarers trading with the Aboriginal peoples of northern Australia centuries ago, to Australia's support for Indonesia's quest for independence in the 1940s. Today, we jointly celebrate twenty years of *Reformasi* in Indonesia, and our shared commitment to democracy and openness. We have supported each other in times of adversity: through the bombings in Bali in 2002, the tsunami in Aceh in 2004 and the bushfires in Victoria in 2009. We celebrate, too, our multifaith, multicultural societies; and the value of unity in diversity.

Our contemporary relationship is based on extensive cooperation spanning political, economic, security, development, maritime, education and people-to-people ties. We draw on the strengths of one another to create jobs and investment and raise living standards. We collaborate to safeguard open sea-lanes, fight terrorism and deter transnational crime. We continue to deepen ties between our societies and cultures.

We recognise that the ecosystem of peace, stability and security is fundamental to the economic growth and prosperity of our two countries. In the dynamic region where we are situated, we experience shifts and challenges affecting our future: growing competition and the threats of conflict, mounting protectionism that erodes the foundations of global trade, and rising intolerance that threatens democratic norms and institutions. If left unattended, these may lead to the dismantling of the precious ecosystem and rules-based regional architecture that we have built over the past half century.

Therefore, we are committed to a peaceful, prosperous and resilient Indo-Pacific region. Our partnership reflects our vision of a region in which the Association of Southeast Asian Nations (ASEAN) is central, the rights of all states are respected, and countries behave in

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<sup>194</sup> This declaration can be found at the website of Department of Foreign Affairs and Trade of Australia <https://dfat.gov.au/geo/indonesia/Pages/joint-declaration-comprehensive-strategic-partnership-between-the-commonwealth-of-australia-and-republic-of-indonesia.aspx>

accordance with international rules and norms. We are committed to a region in which open markets facilitate the free flow of trade, capital and ideas.

Today, reflecting our historic ties, our contemporary relationship, and our desire to work more closely together in the future, we commit to a Comprehensive Strategic Partnership. A Partnership that draws on the strengths and opportunities of our two nations and that provides tangible benefit to our peoples, contributes towards the resolution of various current and future traditional and non-traditional challenges and contributes to strengthening the foundations and ecosystem that we and all the countries in the region have benefitted from.

We will be strong partners in a changing world. We will seize this opportunity to energise our trade, investment and business relations, to advance our strategic cooperation, to forge deeper engagement between our communities and cultures and to build greater links between the young people of our countries. We commit to work together towards a stronger, resilient and more flexible regional architecture in the Indo-Pacific region and contribute to resolving our shared regional and global challenges.

Our Comprehensive Strategic Partnership builds on the 2006 Lombok Treaty, a cornerstone of the relationship underscoring our support for the sovereignty, territorial integrity, national unity and political independence of each nation. We remain committed to consulting closely on key issues and working together on regional challenges. We will be stronger if we tackle challenges together and look for opportunities to expand our institutional links. Australia and Indonesia recommit to our bilateral engagement, including the Annual Leaders' Meeting, Annual 2+2 Foreign and Defence Ministers' Meeting and Ministerial Council on Law and Security. To complete the suite of our bilateral engagement, we encourage our economic-related ministers to meet on a regular basis.

Our Comprehensive Strategic Partnership will open a new chapter in our relationship. It will provide our countries with a robust policy framework to both deepen existing cooperation and support new initiatives. We will frame our Comprehensive Strategic Partnership around five broad pillars of cooperation.

### **Pillar One – Enhancing Economic and Development Partnership**

We commit to work closely towards the implementation of the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) to support deeper economic



integration. IA-CEPA will boost our bilateral links in trade, tourism, investment and the movement of people, as well as facilitate bilateral cooperation in areas including education, health and e-commerce. We commit to support strengthening links between our business communities including between our micro, small and medium size enterprises in both the traditional and digital economy spaces.

We recognise the benefits of open markets and inclusive regional economic integration. We acknowledge that IA-CEPA is a valuable step towards further advancing open markets and trade facilitation and that it provides a pathway for future inclusive regional economic integration. With a view to promoting further regional integration, we commit to conclude negotiations on the Regional Comprehensive Economic Partnership (RCEP).

Through our longstanding economic partnership for development we will cooperate to encourage sustainable and inclusive economic growth and stability; address poverty and inequality; promote women's leadership and empowerment; and guard against possible economic downturns. Drawing on the proximity advantage enjoyed by the eastern part of Indonesia with the northern part of Australia, we will explore ways to further boost economic cooperation and connectivity between the two areas to accelerate growth and development including through expanding transportation links.

## **Pillar Two – Connecting People**

Generations of Indonesians and Australians, particularly our students, have enjoyed the rich experience of getting to know each other. We recognise that people-to-people links and contacts are critical to a strong bilateral relationship. Therefore, we are determined to promote a contemporary view of Australia and Indonesia in our respective societies, through social, arts and cultural collaboration. We commit to strengthen educational and academic cooperation between our two countries, particularly through the expansion and deepening of Indonesian and Australian studies as well as academic exchanges and joint research to promote innovation and find solutions to shared challenges.

Building bridges of cooperation connects our peoples, unlocks opportunities, and builds trust and understanding among our multicultural communities. We commit to facilitate and promote interfaith and inter-communities' links through dialogue and collaboration. We further encourage deeper engagement, dialogue and collaboration between the media, think

tanks and other elements of our civil societies. We are committed to facilitate the ease of movement between Australia and Indonesia for our citizens to strengthen personal connections as well as social, business and people-to-people ties.

### **Pillar Three – Securing Our and the Region's Shared Interests**

Indonesia and Australia enjoy a longstanding and productive security partnership, in particular between our law enforcement, intelligence, defence, legal and judiciary and other associated institutions. We understand that peace, security and stability are indispensable conditions for growth and prosperity.

Therefore, we conduct our security cooperation in a spirit of friendship for our mutual interests and as a contribution to sub-regional, regional and global peace, security and stability. We resolve to face together the shared challenges of rivalry and competition as well as the threats of terrorism, radicalism, extremism and transnational crime. We commit to increase readiness to assist following a natural disaster and in confronting both traditional and new challenges such as cyber threats.

Australia and Indonesia reaffirm that, in accordance with the Lombok Treaty, consistent with our respective domestic laws and international obligations, we shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other.

### **Pillar Four – Maritime Cooperation**

As two countries sharing one of the longest maritime boundaries in the world, we recognise that effective and meaningful maritime cooperation will be critical. Therefore, we are determined to implement the 2017 Joint Declaration on Maritime Cooperation and the 2018 Maritime Cooperation Plan of Action to the fullest towards the realisation of our shared vision of a peaceful, secure and stable maritime domain where people, commerce and the environment can flourish.

We will continue to promote maritime trade and the sustainable development of the blue economy for our collective prosperity. We will also work together in achieving maritime prosperity by combating transnational crimes committed at sea, and illegal, unreported and unregulated fishing; developing marine science and technology collaboration; as well as

promoting our maritime cultural heritage.

### **Pillar Five – Contributing to Indo-Pacific Stability and Prosperity**

Indonesia and Australia are located at a crossroad of two great oceans, the Indian and the Pacific Oceans. Our future lies in maintaining peace, security and stability while also ensuring growth and prosperity in the Indo-Pacific region.

We commit to promoting a rules-based regional architecture that is open, transparent and inclusive, resilient to coercion, respects the norms and values of international law and incorporates habits of dialogue and diplomacy in the settlement of disputes. With our partners in the Indo-Pacific region, we will continue emphasising ASEAN centrality and work through multilateral institutions, particularly the East Asia Summit, in pursuit of these goals.

We will work together, with other countries, and in multilateral institutions including the United Nations, G20, Asia Pacific Economic Community, Indian Ocean Rim Association and MIKTA. We will strengthen our collaboration in responding to humanitarian crises in our region. We will work together to address current and future challenges and promote the creation of new growth centres to ensure the sustainable growth and prosperity of the Indo-Pacific region.

To give effect to our Comprehensive Strategic Partnership, we will jointly determine key areas of cooperation in line with these five priority pillars. To maintain momentum, our Foreign Ministers will report to Leaders annually on progress.

**31 August 2018**

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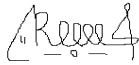
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**TÍTULO DE LA TESIS: THE IMPACTS OF AUSTRALIAN POLICIES  
ON BOAT PEOPLE TOWARDS ITS BILATERAL RELATIONS  
WITH INDONESIA:**

**An analysis of Indonesia's territorial sovereignty**

**DOCTORANDA: Riska Sri Handayani**



**INFORME RAZONADO DEL DIRECTOR DE LA TESIS**

(se hará mención a la evolución y desarrollo de la tesis, así como a trabajos y publicaciones derivados de la misma).

La presente tesis se ha desarrollado bajo mi dirección, cumpliendo con todas las indicaciones que le han sido realizadas por mi. La doctoranda ha realizado un trabajo coherente con el título planteado que ha debido ser modificado en atención al propio desarrollo de la investigación. La tesis hace un planteamiento general de la doctrina, la legislación y la teoría del tema general de las migraciones, para luego desarrollar exhaustivamente el estudio de la situación de los “boat people”, las relaciones internacionales entre Indonesia y Australia en relación a este tema y las derivadas que afectan a la soberanía territorial indonesia.. Hace un análisis jurídico, sociológico, ético y político de la situación planteada. Las conclusiones aportadas y las propuestas formuladas abren la investigación a otros espacios en los que se han planteado y se puedan plantear idénticas situaciones de conflicto.

Como previo a la finalización de la Tesis, la doctoranda ha publicado como resultado de la misma el siguiente estudio:

HANDAYANI SRI, Riska “Boat people” hacia Australia: ¿son auténticos refugiados o migrantes económicos”. Una perspectiva de la situación de los cinco principales países de origen” en COCA VILLAR, Cristina; GARCÍA VALLINAS, Eulogio; MARTÍN SOLBES, Victor M.; RAMÍREZ HURTADO, Carmen, *Estudios en Cultura de Paz, Conflictos, Educación y Derechos Humanos. In memoriam Francisco A. Muñoz*, Editorial Síntesis, Madrid, 2015, pp. 113-131.

La Editorial Síntesis es una de las mejor situadas en el ranking de revistas tal y como se expone en el documento de índices de calidad. Los autores que participaron en el mismo número en el que publicó su artículo, son algunos de ellos, de primer nivel y máximo reconocimiento en los estudios de la paz y los conflictos.

HANDAYANI SRI, Riska • La aplicación de La Política de “Vuelta a Los Barcos” en Europa: Una Lección de Australia (Applying “Turn Back Boats” Policy in Europe: A Lesson From Australia), Ámbitos Revista de Estudios de Ciencias Sociales y Humanidades, nº 20, 2018, aceptada publicación con certificado acreditativo.

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