

## CHAPTER ONE

### INTRODUCTION

#### A. Background of Research

As a signatory to the 1951 Refugee Convention, Australia has signalled its willingness to accept certain obligations to those who are seeking protection to those who are recognised as refugees and those who face persecution based on their race, religion, nationality, political opinion or social group. However, the rights of these people that are coming to Australia and seeking for protection have been gradually eroded as governments (in Australia and elsewhere) continually increase the discretionary powers of the executive to detain, process, and remove, while at the same time they limit the role of judiciary by removing individuals' ability to challenge these executive decisions in the courts.<sup>1</sup>

Since the beginning of the 19th century, Australia had become a migration place for several nations. In the 1800s, there was a great migration from Europe and then by the 1900s a wave of migration came from China. Those migrations had different goals and motivations. Even recently in the new millennium era, those migration waves are recoloring the modern history of Australia.<sup>2</sup>

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<sup>1</sup>Graham Thom, 2009, "Human Rights in Australia: Refugees and Asylum Seekers", available at: <http://www.australianreview.net/digest/2009/11/thom.html>, accessed on May 26<sup>th</sup>, 2016 at 1.10pm.

<sup>2</sup>Nuni, 2009, "Australia Surga Untuk Pencari Suaka?", available at: <http://baltyra.com/2009/10/28/australia-surga-untuk-pencari-suaka/>, accessed on November 11<sup>th</sup>, 2016 at 10.56pm.

Due to the facts stated in the preceding paragraph, it can be concluded that Australia is one of favourite destinations for asylum seekers. Nevertheless, nowadays Australia has responded irrelevantly by transferring asylum seekers to third countries for the sake of encouraging regional solution to stop human smuggling as asylum seekers into Australian territorial. With this basic, Australian Government enters into the agreements with Malaysia and Papua New Guinea (PNG) to transfer asylum seekers to third countries.

Viewed from the standpoint of International Law, a country is forbidden to expel asylum seekers who come to the area of the country. In accordance with the terms of asylum, in a foreign language, is basically means a form of protection given by a state to citizens of other countries whom safety is threatened. So, they should not be rejected or expelled. Reasons or conditions of granting are asylum in the Convention on the Status of Refugees, 1951, Article 1 letter A paragraph (2) which states that a person may be granted asylum if she/he commits political crimes, and there is a well-founded fear that the person will be prosecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.<sup>3</sup>

This is reinforced with the establishment of the United Nations High Commissioner for Refugees (UNHCR) in 1950 which aimed to ensure that countries are aware of their obligations to maintain asylum seekers and refugees and take appropriate actions with the obligations. Refugees enjoy a

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<sup>3</sup>Tri Inaya Zahra, Nurdin, Hanif Nur Widhiyanti, "Pemindahan Pencari Suaka (Transfer Asylum Seeker) Dalam Hukum Internasional", p. 2.

distinct and unique standard of protection under International Law within the framework of international regime for the protection of refugees, which is based on 1951 Geneva Convention Relating to the Status of Refugees<sup>4</sup> and its 1967 Protocol.<sup>5</sup>

Discussing bilateral agreements, the transfer of asylum seekers from Australia to Malaysia and PNG seems quite different from International Law. Based on International Law, Australia is forbidden to expel asylum seekers who arrived at the area of Australia. However, Australia perceives itself entitled to transfer asylum seekers to third countries by making bilateral agreement with Malaysia and PNG.

International Law does not prohibit third country from processing the claims of asylum seekers. This does not mean that Australia can avoid its international human rights obligations by transferring asylum seekers to third countries. Australia may remain liable for the consequences of its action of transferring them and must ensure that adequate safeguards are in place in those countries,<sup>6</sup> although based on International Law there is no legal basis forbidding the transfer of asylum seekers. Nonetheless, UNHCR in a Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum Seekers, provides the requirements which should be fulfilled by those countries that participated into bilateral agreement in terms of the transfer of asylum seekers.

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<sup>4</sup>*Ibid.*

<sup>5</sup>Protocol Relating to the Status of Refugees 1967.

<sup>6</sup>The Australian Human Rights Commission, 2013, *Asylum Seekers, Refugees and Human Rights*, Paragon Printers Australia, p. 15.

In addition, Australia has a long history of accepting refugees for resettlement. Approximately over 800,000 refugees and displaced person including thousands of whom were during and immediately after World War II, have settled in Australia since 1945.<sup>7</sup> Today, Australia continues to have a generous resettlement programme and along with the United States and Canada, has ranked consistently among the world's top three resettlement countries.<sup>8</sup>

## **B. Research Questions**

1. What are the reasons of Australia to transfer asylum seekers to the third countries?
2. How is the process of transfer of asylum seekers in Australia to the third countries based on Refugee Convention?

## **C. Research Objective**

The research aims to find out the reasons of Australia transferring Asylum seekers to the third countries. In addition, the author seeks to understand and find out the process of how Australia as a transferring state dispatches asylum seekers to the third countries.

## **D. Benefits of Research**

The research provided benefits as follows:

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<sup>7</sup>Janet Phillips, 2015, "Asylum Seekers and Refugees: What are the Facts?", *Background Note: Social Policy Section*, Parliament of Australia, Department of Parliamentary Services.

<sup>8</sup>Australian Human Rights Commission, "Asylum Seekers, Refugees and Human Rights: Snapshot report 2013", *taken from* [http://www.humanrights.gov.au/sites/default/files/document/publication/snapshot\\_report\\_2013.pdf](http://www.humanrights.gov.au/sites/default/files/document/publication/snapshot_report_2013.pdf), downloaded on November 5<sup>th</sup>, 2016 at 11.34am.

## 1. Theoretically

The research grants a better understanding and deeper knowledge in the regulation of the International Law that is going to be applied to the issue of asylum seekers to the third countries in Australia. The research also enables to comprehend the role of non-refoulement principle as one of the principles in Refugee Convention to overcome the issue of refugee and asylum seekers.

## 2. Practically

The research permits the author to develop the understanding on how International Law regulates the issue of transferring asylum seekers to the third countries which are regulated by State Party of the 1951 Refugee. Also, the research enhances knowledge relating to the issue of asylum seekers. Finally, the outcome of the research would give better understandings and provide specific references with regard to refugee law concerning protection of refugees in accordance to International Refugee Law.