

## **Balanced Security and Humanity: an Analysis of Australian Policies in Handling of Boat People and Its Impact on Indonesia**

**Maria Natasha Rudijanto<sup>1</sup>, Vania Cianta Putri<sup>2</sup>, Ellen Santoso<sup>3</sup>**

<sup>1,2,3</sup> Universitas Tarumanagara, Indonesia

Email: [maria.205210097@stu.untar.ac.id](mailto:maria.205210097@stu.untar.ac.id), [vania.205210091@stu.untar.ac.id](mailto:vania.205210091@stu.untar.ac.id),  
[ellen.205210071@stu.untar.ac.id](mailto:ellen.205210071@stu.untar.ac.id)

\*Correspondence: [maria.205210097@stu.untar.ac.id](mailto:maria.205210097@stu.untar.ac.id)

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### **KEYWORDS**

Balanced Security and Humanity, Australian Policies, Boat People

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### **ABSTRACT**

The rise of Boat People arriving in Australia made the Australian government issue a policy called a policy Operation Sovereign Border, the policy is a policy used to deal with asylum seekers by preventing and expelling asylum seekers. This policy reaped controversy because it violated the provisions of international law. This legal writing analyzes how efforts to deal with boat people and their rights and obligations according to international law as well as the influence of Australian policies in dealing with boat people and the impact of Australian policies on Indonesia. This research uses a normative juridical method which is carried out through a literature study with a statutory, historical approach, and conceptual. Australia has also ratified the 1951 Convention which has become the basis of international law for refugees, and has also regulated the protection of refugees and has become a reference for many countries<sup>3</sup> in developing their refugee laws and policies. Australia's policy on preventing migration by boat has several significant effects, such as: (1) Reducing the number of migrants via; (2) Impact on the people smuggling business; (3) controversies and issues of human rights; and (4) Regional effects.

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### **Introduction**

The existence of Australia as a country with an internationally recognized refugee system and a high standard of living is one of the factors that can influence the large number of asylum seekers who choose to go to Australia. Recorded by *Australian Bureau of Statistic*, in 2020 as many as 7.6 million migrants have entered Australian territory by two types of routes, namely air routes and sea routes. In general, migrants traveling by air have tight security and documents such as visas and personal data that are checked optimally, but it is different from sea routes where the majority are passed by groups of individuals who have fled due to conflicts with their countries. Individuals who have this problem are known as Boat People, who choose to seek asylum in other countries such

as Australia. The surge in the arriving boat people population prompted the Australian government to issue a policy known as *Operation Sovereign Borders* (OSB).

*Operation Sovereign Borders* (OSB) is an immigration policy implemented in Australia to deal with illegal or illegal immigrants by sea, commonly known as boat people. This policy, implemented and practiced directly by the Australian military, has the aim of preventing transnational crime, namely people smuggling and protecting Australia's borders. The implementation of this policy is carried out by expelling boats and ships that undocumented which will sail to Australia. The expulsion is carried out before the boat and ship enter Australia. Therefore, the actions by law enforcement officers in Australia are explicitly against international law, especially since Australia is a country that ratified the 1951 convention on July 25, 1951 in Geneva and entered into force on April 22, 1954. The 1951 Convention was formed.

In Article 33 paragraph (1) of the 1951 Status of Refugees Convention: “*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*”. Referring to these provisions, Australia should not be required to repatriate or return a refugee to the territorial border. It also involves the Agency of the United Nations (UN) which deals with refugees namely *United Nations High Commissioner for Refugees* (UNHCR) strongly condemns Australia's OSB policy.

Boat people usually come to Australia via the sea waters around Indonesia. This makes Indonesia intervene in the control of boat people, because there are many cases of boat people who often get stranded in Indonesian waters before reaching the destination country. Until now, Indonesia itself is known to have not agreed to the 1951 Convention or the 1951 Convention New York Protocol 1967 so that there is a legal vacuum relating to how refugees are handled in the State of Indonesia.

Although Security is a priority to protect the territorial integrity of the country and maintain public order. However, it is also important to recognize and protect human rights and to pay attention to the humanitarian obligations towards individuals seeking international protection. Universal human rights principles, such as the right to live and not be tortured, and protection against inhumane or degrading treatment, must be upheld in efforts to deal with boat people. In maintaining this balance, countries are expected to ensure border security without neglecting their humanitarian responsibility to protect and provide protection to those in vulnerable situations.

## **Research methods**

In this scientific article, the author uses this type of research, namely normative juridical which focuses on positive legal principles, where this research focuses on sources of legal norms and rules, applicable legislation, as well as other sources of law that are believed to have relevance to the current discussion. investigated in this scientific article. The existence of this type of research is normative juridical, so the method in this article uses a statutory approach, historical approach, and conceptual approach. The data used in this article is secondary data consisting of primary and secondary legal materials. The primary legal material used is statutory regulations. Then, the secondary legal materials used are written publication legal materials that provide explanations regarding primary legal materials such as law books, legal journals containing basic principles, doctrines of experts in the field of law, along with the results of legal research from relevant legal scholars. with the problem being researched. In collecting data and

information, researchers will collect as much data and information as possible from the literature related to the topic of discussion.

## **Results and Discussion**

### **A. Handling of Boat People and Their Rights and Obligations According to International Law**

Australian boat people refer to immigrants or refugees trying to reach Australia by boat or other illegal means of transportation through international waters. They often travel in search of asylum or in search of a better life. It is important to understand that international law governing the problem of Australian refugees or boat people includes several treaties and international legal instruments. It regulates the management of refugees or boat people with the principles and obligations stipulated in various agreements and international legal instruments. International legal protection for Australian boat people is based on principles contained in international human rights law, including the Universal Declaration of Human Rights and the 1951 Refugee Convention. In addition, there are other supporting agreements, including the 1967 Protocol on the Status of Refugees, The United Nations Convention on the Law of the Sea 1982, and the 2000 Palermo Convention. In addition to international legal agreements and instruments generally covering all countries, Australia itself is the country with the most asylum seekers as well as having a refugee system and high standard of living putting forward a regional framework governing matters boat people specific to the territory of Australia, namely the 2001 Canberra Agreement and the Comprehensive Agreement on the Handling of Refugees between Australia and Nauru.

Refugees are an international problem that certainly requires a protection arrangement based on legal principles and human rights (HAM). as written in the 1951 Convention. The 1951 Refugee Convention is officially known as an international treaty agreed upon by members of the United Nations in 1951 governing the protection of refugees and their rights. The 1951 Refugee Convention has become the basis of international law in refugee protection and has become a reference for many countries in developing their refugee laws and policies. The 1951 Refugee Convention recognizes that a person who has reasonable grounds for fear of persecution on the grounds of race, religion, nationality, social group or political opinion may qualify for refugee status. The 1951 Convention also provides a definition of refugees themselves, and establishes the obligation of states to provide protection to them and prohibits the forced expulsion of refugees to countries where they face a serious threat. Supporting statements contained in the 1951 Refugee Convention, as follows “Any person who owing to 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, 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” describes how a 1951 Convention treated refugees.

According to Article 14 of the Charter of the Universal Declaration of Human Rights “*Everyone has the right to seek and enjoy asylum in another country to protect himself from persecution and torture*”. The main purpose of this convention is to provide legal protection to refugees and define their rights. This convention defines who is considered a refugee and sets out the basic rights that must be guaranteed to them. Some of the rights guaranteed by this convention include the right not to be returned to their

country of origin (*non-refoulement*), the right to protection and humanitarian assistance, the right to access education, the right to work, the right to own property, and the right to access the justice system. Some of the roles of protection assistance applied to the 1951 Convention are as follows:

- a. Articles 3 and 4 of the 1951 Convention regulate that discrimination is not allowed. Countries that have agreed to the 1951 Convention may not discriminate against or distinguish refugees because of their taste, religion, country of origin, or skin color.
- b. Article 12 regulates personal status and domicile, which means that the personal status of refugees is regulated according to the law where they are placed (*place of residence*).
- c. According to Articles 13, 14 and 30, refugees have the same rights in terms of ownership of movable and immovable property and have the right to send their assets to the place or country where they are placed or settled.
- d. In Article 15 it is stated that countries which have agreed to the 1951 Convention are obliged to recognize the freedom of refugees in the sense of the right to associate.
- e. Article 16 states that refugees have the freedom to present cases before the court.
- f. It is stated in Articles 17, 18 and 19 that refugees can work or establish a trading company with the requirement of having a certificate to validate skills and being placed in an appropriate job.
- g. Article 22 states that refugees will receive the same treatment as citizens.
- h. Every refugee can obtain rights to social welfare such as wages and so on which are listed in Articles 20 and 22.
- i. Every refugee in this case is also entitled to an identity letter and documents that support travel out of the territory of the country where he is placed.

Broadly speaking, the rights attached to a refugee include civil, economic, political, and socio-cultural rights, which apply to all people, both citizens and non-citizens. All of these rights are summarized in *International Bill of Human Rights* (UDHR), *International Covenant on civil and Political Rights* (ICCPR).

Furthermore, it should be noted, apart from the rights and protection given to refugees, the 1951 Convention also does not forget to outline the obligations of refugees as stated in Article 2, namely “*every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order*” which means that every refugee is obliged to obey every existing regulation in order to create public order in the country where he is placed.

So far, there has been widespread debate about whether the legal protection afforded to Australian boat people is adequate or in line with international standards. Several human rights advocacy groups and international organizations have criticized Australia's policy towards treating these migrants. However, this issue is complex and continues to be a topic of debate at the international level. Australia has implemented a strict policy towards boat people and has a very different approach to dealing with them. Australia uses an "irregular maritime arrivals" policy approach to dealing with people arriving by boat without holding valid visas or through legal channels. Australia has hereby adopted a controversial immigration policy, including detaining and sending boat

people overseas to islands in the Pacific for processing, such as Manus Island in Papua New Guinea and Nauru. The reasons behind this policy involve a number of complex factors, including concerns about national security, the sustainability of the immigration system, and border controls. One of the reasons often cited by the Australian government is to prevent people arriving illegally by boat from creating an opening for people smuggling and dangerous practices. They argue that the detention and denial of arrival of boat people can serve as a warning to other potential refugees, reducing the incentive to try to reach Australia by unofficial means. However, Australia's policy has generated a lot of controversy and criticism from various parties, including human rights groups, activists and international organizations. They argue that Australia's policy of detaining and processing boat people violates the basic principles contained in the 1951 Refugee Convention, especially the principle non-refoulement which prohibits the forced return of refugees to their dangerous country of origin. Others also argue that Australia's policy towards boat people does not treat them with respect and humanity, and that the prolonged detention and difficult living conditions in places such as Manus Island and Nauru violate human rights.

Thus, the UN formed an international institution *United Nations High Commissioner for Refugees* (UNHCR) with the main objective of protecting the rights and safety of refugees internationally. However, UNHCR can only determine a person's status as a refugee or not if the country is not a party to the Convention. Thus, in participating countries such as Australia, UNHCR does not play a decisive role, but instead holds the task of overseeing Australia's policies in dealing with refugees.

### **B. The Influence of Australian Policies in Overcoming Boat People and the Impact of Australian Policies on Indonesia**

The presence of a policy is basically good for the country, similar to the policy issued by the Australian state in overcoming Boat People by issuing *Operation Sovereign Borders*. Like immigration in other countries, some politicians argue that without strict policies, the country's beaches will surely be flooded with asylum-seeking Boat People. Seeing the booming population of Boat People in Australia, according to data from UNHCR, there are as many as 23,434 refugees have entered the country. Australia conducted a border sovereignty operation (OSB) without Indonesia's knowledge or consent, and Australia's actions have also violated international law of the sea. Australia can enter the Indonesian territorial sea.

Policy detention outside Australia was introduced by the Australian government in 2001 and focuses on the detention of refugees arriving by boat on islands outside mainland Australia. Under this policy, boat people arriving by boat in Australian waters are prohibited from entering the country. As punishment, they are detained in detention centers located on islands in the Pacific region, such as Manus Island in Papua New Guinea and Nauru Island. This detention center is managed by the Australian government with assistance from the local government.

The main objective is to prevent refugees arriving by boat from entering mainland Australia and reduce the number of people attempting the dangerous journey, the effect of this policy is to reduce security threats, combat people smuggling and maintain control over the asylum application process. Australia's policy on preventing migration by boat has several significant influences, including:

1. **Decrease in the number of migrants by boat:** One of the main effects of the policy has been a reduction in the number of people trying to travel by boat to

reach Australia. The Refugee Council says since 1976 there have been two peak periods of arrivals by boat: 1999-2002 and 2009-2014. "The rapid decline in numbers after this period reflects a policy of forced return boats," he said, "The policy of outright denial and detention outside Australia has created significant barriers to those wishing to enter the country illegally. As a result, the number of refugees arriving by boat has decreased dramatically since this policy was enacted, as immigrants have become reluctant to the new strict Australian government's strict policy, because the policy contains, anyone who attempts to sail a ship that is not legally to Australia will be returned to the point of departure, returned to their country of origin or even transferred to another country.

2. **Impact on the people smuggling business:** People smuggling (*people smuggling*) is a serious problem for the Australian government many of which are not visible or detected. Several incidents of people smuggling that have been uncovered indicate that immigrants pay large sums of money to ship owners to be able to enter Australian territory. At first it was revealed that only boats with a small capacity were found, but later it was also found that ships were equipped with good navigation tools and communication technology. The ship's crew hid the immigrants in the ship's hidden compartment. This method is often found in people smuggling via the eastern Australian route which is very strategic for smuggling people undetected. Once the immigrants reach Australia they will be difficult to detect because they can mix easily with the residents of Sydney, Brisbane and Cairns.

There are several reasons why the Australian government considers people smuggling a major threat to its people, including:

1. There are serious security concerns and concerns about criminal activity when people who come to Australia do not have clear identification;
2. There is a risk of quarantine against health checks for ordinary citizens who will go through the immigration process;
3. The processing of illegal immigrants creates significant cost and logistical problems;
4. Human smuggling can violate Australian sovereignty, interfere with Australia's sovereignty in controlling its country's borders.

This Australian policy has disrupted people-smuggling routes and reduced the appeal of those wishing to take the risk of traveling by boat. By increasing law enforcement against people smugglers and implementing a policy of outright refusal, Australia has been successful in disrupting the operation of this illegal business. This can reduce the motivation for people smugglers and reduce the number of migrants caught up on dangerous journeys.

3. **Controversies and human rights issues men:** Australia's policy of preventing migration by boat has also been a source of controversy and contestation. Because, in its implementation, Australia's OSB policy has violated international human rights obligations. Australia ignores the humanitarian principles and aims of the Refugee Convention, not only that they also violate concrete legal obligations such as the individual's right to seek asylum (and officials' right not to be punished for arriving without a visa in such cases), the right to be free from abuse, inhuman or degrading, the right not to be arbitrarily detained, and the right to non-discrimination. Several human rights groups and international organizations have criticized this policy for violating human rights, particularly

in relation to long-term detention and poor living conditions in detention centres. This criticism has raised debate about the humanity of the policy and raised questions about Australia's obligations to protect and care for refugees, Australian authorities say the policy has largely stopped asylum seekers risking their lives trying to reach its territorial waters in boats inadequate to navigate the sea.

4. **regional effect:** Australian policy also has an effect on countries in the Pacific region that cooperate in handling migration by boat. Countries such as Papua New Guinea and Nauru host detention centers and must manage the consequences of such policies. Papua New Guinea is one of two countries in the Pacific Ocean paid for by Australia to host asylum seekers and refugees. In 2013 more than 3000 asylum seekers were detained in Papua New Guinea, under Australia's offshore policy, a policy that prohibits resettlement of any migrant trying to enter Australia by sea. Papua New Guinea is seeking an end to years of involvement in Australia's offshore processing system, an Australian-run detention facility on Papua New Guinea's Manus island that was found illegal by the country's Supreme Court in 2016. Nauru, a small Pacific island has a coastline of just 30 kilometers and is home to around 10,000 people. Far larger numbers of asylum seekers arriving in Australia by plane than those arriving by boat are subject to offshore processing. Spokesperson for the Refugee Action Coalition, a community activist organization, Ian Rintoul said Nauru was not an adequate place for migrants to live. "There are also big questions about Nauru. I mean, the fact is, most of the people who used to live on Nauru are now in Australia. The situation on Nauru did not provide security and certainty for anyone who was sent there. The government on Nauru is still struggling to be able to provide the medical services that are increasingly needed for people who are victims of long-term detention.". This can have social, political, and economic impacts on these countries.

## Conclusion

The situation of migrants arriving by sea whose identity is not clear is known as the Boat Man. One of the clear goals that has made the Boat People rise is to seek asylum for their survival in other countries such as Australia. The existence of the Australian state has been recognized internationally and the standard of living is high. This is a factor that influences the number of asylum-seeking Boat People who come to Australia so that the government there issues a policy Operation Sovereign Borders (OSB). The implementation of this policy is carried out by expelling boats and ships that undocumented which will sail to Australia. This action is carried out before boats and ships enter the State of Australia. Therefore, the actions by law enforcement officers in Australia are explicitly against international law which of course requires an arrangement of protection based on the principles of law and human rights (HAM) as written in the 1951 Convention. In addition to the 1951 Convention, the rights of refugees are also have been included in International Bill of Human Rights (UDHR), International Covenant on civil and Political Rights (ICCPR). Australia carried out Operation Sovereign Border (OSB) to secure the border without coordination or approval from the Indonesian side, and this action was also considered to violate the principles of international law of the sea. In some cases, Australia may enter Indonesian territorial waters without the necessary permits.

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