

CHAPTER I

INTRODUCTION

1.1 Background

For the first time in history, the Convention Relating to the Status of Refugees (the 1951 Refugee Convention) used the word ‘refugee’ in 1951. The 1951 Refugee Convention is historic achievement as the base of international refugee law.¹ Article 1 of the 1951 Refugee Convention defines refugee as “*a person who keeps ‘well-founded fear of persecution’ on account of race, religion, nationality, membership of a particular social group or political opinion, so that is being outside the country of his or her nationality and is unable or unwilling to get the protection of the country*”.² The movement of the refugee is entirely different from the general migrant who moves from his or her original habitat to another *voluntarily* in order to improve the standard of living.

The United Nations High Commissioner for Refugees (UNHCR) clearly distinguishes the term ‘refugee’ and ‘migrant’. While the refugee is classified as a person who should specifically be protected internationally, migrant is not considered as such.³ In other words, while ‘migrant’, which connotes broader

¹ United Nations High Commissioner for Refugees. "The 1951 Refugee Convention." UNHCR. Accessed December 22, 2020. <https://www.unhcr.org/1951-refugee-convention.html>.

² United Nations High Commissioner for Refugees. "The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis." UNHCR. Accessed December 22, 2020. <https://www.unhcr.org/4ca34be29>.

³ United Nations High Commissioner for Refugees. "'Refugees' and 'Migrants' – Frequently Asked Questions (FAQs)." UNHCR. Accessed December 22, 2020. <https://www.unhcr.org/en-us/news/latest/2016/3/56e95c676/refugees-migrants-frequently-asked-questions-faqs.html>.

situation of movement, mostly for the reason of the quality of life, has to be protected by the international human rights law *universally*, international law stipulates ‘refugee’ who needs *special* treatment and protection by states.⁴ Also, UNHCR expresses its concern over the confusion between the term ‘refugee’ and the term ‘migrant’ because the awareness of special treatment for refugee may be weakened when the meaning of the terms become vague.

According to the UNHCR, the number of people who have left their homeland with fear throughout the world is estimated at around 26 million in 2019.⁵ Out of that, Syria, Venezuela, Afghanistan, South Sudan, and Myanmar are in the top 5 rank account for outflowing people from their country. Since various types of violence such as civil war, organizational violence or persecution from the government are extended over the long term, the scale of outbreaks refugees and the burden on the international community responding to them is getting bigger unprecedentedly and rapidly.

Irregular and unauthorized channels without any legal process are mostly used when people are trying to escape from their homeland because they are forced to run away exigently for safety and preparing legal mechanisms is impossible. The channel that people mostly use is smuggling, crossing the strait using a small boat. In order to do this, people pay agent fee to the smugglers or corrupt officials

⁴ United Nations High Commissioner for Refugees. "'Refugees' and 'Migrants' – Frequently Asked Questions (FAQs)." UNHCR. Accessed December 22, 2020. <https://www.unhcr.org/en-us/news/latest/2016/3/56e95c676/refugees-migrants-frequently-asked-questions-faqs.html>.

⁵ United Nations High Commissioner for Refugees. "Refugee Statistics." *UNHCR*, www.unhcr.org/refugee-statistics/.

beforehand so that they could continue their journey.⁶ It is too perilous and unsafe, which may lead to devastating results. Despite the high risk of any kind of accident in the middle of an ocean, they are willing to risk their lives to escape in order to seek a better place to live in safe.

As the conflicts and persecutions from the region have been prolonged, people who were displaced less likely to go back to their homeland, and the humanitarian crisis has also prolonged and raged. Sometimes they are exposed to crime and exploited by the smugglers during their journey. Moreover, on account of the changing global order for refugees, most people are less likely to move and resettle in the countries that they want to resettle in. Facing disapproval, those people are in limbo before the move to the final destination. Recently, the scholars who are studying forced migration and the involuntary immobilization of the contemporary world calls this phenomenon ‘transit migration’ or ‘state of limbo’, which is going to be discussed later.

Over the past decades, Indonesia has been considered as the last stopover for refugees and asylum seekers who want to go over the final destination, mostly Australia. It caused many refugees and asylum-seekers had kept flowing into Indonesia. One figure that does deserve highlighting is Indonesia is merely a temporary residence, not their final destination. Furthermore, Indonesia is a non-signatory state for the Refugee Convention in 1951 and its 1967 Protocol which has

⁶ Graeme Hugo, George Tan, and Caven Jonathan Napitupulu. "Indonesia as a Transit Country in Irregular Migration to Australia." *A Long Way to Go: Irregular Migration Patterns, Processes, Drivers and Decision-making*, 2017, 167-96. doi:10.22459/lwg.12.2017.07.

its purpose to distinguish refugees who are not protected by their home country from 'normal' foreigners and guarantees their rights for humanitarian purposes.

Via Malaysia, most refugees and asylum seekers are entering Indonesia, crossing Malacca Strait by boat.⁷ In that process, they pay agent fee of around \$ 5,000 – 10,000 to broker and additional bribes to corrupted officials who are guarding the state border, in order to let them in.⁸ As they arrive in Indonesia after the costly and deadly journey, they try to seek protection from the Indonesian government and UNHCR office in Jakarta.

According to UNHCR, there were several fluctuations of flowing refugees and asylum seekers into Indonesian territory in recent decades. The inflow of refugee and asylum seekers rapidly increased in the early 2000s, slowed down in the mid-2000s, and increased again in the late 2000s.⁹ After the slowing down again until the mid-2010s, 13,700 of refugees and asylum seekers are registered with UNHCR until 2020, having around 10,300 refugees and 3,400 asylum seekers from 45 countries.¹⁰ Based on the UNHCR report in 2020, 27% of people among those refugees and asylum seekers are children.¹¹ People who came from Afghanistan are taking up the largest ratio which is more than a half of the refugees and asylum seekers entering Indonesia.¹²

⁷ Muzafar Ali, Linda Briskman, and Lucy Fiske. "Asylum Seekers and Refugees in Indonesia: Problems and Potentials." *Cosmopolitan Civil Societies An Interdisciplinary Journal* 8, no. 2 (July 2016). doi:10.5130/ccs.v8i2.4883.

⁸ Muzafar Ali, Linda Briskman, and Lucy Fiske, 2016

⁹ "UNHCR in Indonesia - UNHCR Indonesia." *UNHCR*, www.unhcr.org/id/en/unhcr-in-indonesia.

¹⁰ "Indonesia." *Indonesia | Global Focus*, reporting.unhcr.org/node/10335.

¹¹ UNHCR Indonesia, n.d.

¹² UNHCR Indonesia, n.d.

Ironically, the major hosting countries are not well-developed countries. Developing countries (and sometimes, the least developed countries) usually accept most of the refugees and asylum seekers from all around the world who have run away from the organized threat. According to the UNHCR, 86% of world refugees are hosted in developing countries.¹³ Indonesia is also one of the countries hosting refugees from outside of the border as a developing country. The problem arises in this context. Developing countries (and sometimes, the least developed countries) do not have enough legal mechanisms for the people from outside of the border to seek help. Mostly, the developing countries hosting refugees either temporarily or permanently have undergone a lack of economic ability.

The developing countries cannot take a risk to provide enough basic needs such as food and shelters or handout for refugees and asylum seekers alongside taking care of their own people. They cannot discount the possibility of backlash from the local people over supporting refugees and asylum seekers. Likewise, as a developing country, Indonesia cannot afford to host and provide enough care for the refugees and asylum seekers who just stop by temporarily. Furthermore, the absence of a good quality humanitarian mechanism matters. Since most developing countries do not have enough good quality humanitarian mechanisms to assist people enjoying a high-level of welfare, they cannot provide proper protection to refugees and asylum seekers. In this context, if refugees and asylum seekers stay in

¹³ United Nations High Commissioner for Refugees. "Refugee Statistics." UNHCR. December 8, 2020. Accessed March 29, 2021. <https://www.unhcr.org/refugee-statistics/>.

developing countries either temporarily or permanently, it may raise another problem regarding basic human rights.

The beginning of accepting refugees temporarily into the territory goes back to the 1970s, in Vietnam War. Also, in the 1990s, Indonesia had taken a role as a transit state for Rohingya refugees. Until today, one of the reasons accepting refugees from Afghanistan and many more countries in the territory is based on international obligations, especially the principle of non-refoulment.¹⁴ This international obligation is rather related to moral responsibility, which is the universal principle in international society.¹⁵ Since joining to support several international human rights mechanisms such as the Universal Declaration of Human Rights in 1948, the Convention against Torture in 1985, the Convention on the Rights of the Child in 1985, today Indonesia can hardly be free from the universal principle on human rights and humanitarianism in international society.

To handle the issue, Indonesia has worked together with outside actors, especially Australia and other international organizations for a long time. The commitment from Indonesia stems from the cooperation between Indonesia and Australia. Indonesia and Australia have worked together on the issue for several decades. Through the Regional Cooperation Framework (RCF), mostly under Australia's leadership, Indonesia and Australia have tried to deal with refugee

¹⁴ Arie Afriansyah, and Eva Achjani Zulfa. "REFUGEE RESETTLEMENT: A REVIEW OF INDONESIAN LAWS AND PRACTICES." *Indonesia Law Review* 8 (August 2018): 204-20. doi:10.15742/ilrev.v8n2.489.

¹⁵ Arie Afriansyah, and Eva Achjani Zulfa, 2018

smuggling in the region.¹⁶ Australia supported financial assistance for blocking irregular smuggling from Indonesia, and Indonesia had been granted diplomatic and economic profit from it.¹⁷ However, along with the rapidly changing international situation about the refugee issue, the Australian government determined to interrupt its support in 2018.¹⁸ Until today, burdens from the issue have shifted to Indonesia where is only referred to as a transit state.

1.2 Research Question

Based on the description from the background above, using Indonesia as a case study, the research interrogates the following questions:

1. What are the factors that contribute to the long delay of the onward movement for the refugees in the transit state?
2. What are the impacts of such delay on both the refugees and the transit state?

1.3 Research Objective

The objective of this research is to identify and explain what makes refugees and asylum seekers to halt and protract their journey, especially in Indonesia; as a transit state and also referred as the last gateway to their destination. Also, the

¹⁶ Amy Nethery, and Carly Gordyn. "Australia–Indonesia Cooperation on Asylum-seekers: A Case of ‘incentivised Policy Transfer’." *Australian Journal of International Affairs*, 2nd ser., 68 (2014): 177-93. <http://dx.doi.org/10.1080/10357718.2013.841122>.

¹⁷ Amy Nethery, and Carly Gordyn, 2014

¹⁸ The Jakarta Post. "Indonesia Refugee Policy Is on Right Track." The Jakarta Post. 2019. Accessed January 27, 2021. <https://www.thejakartapost.com/academia/2019/01/24/indonesia-refugee-policy-is-on-right-track.html>.

research aims to study how does it affect the people and the transit state itself during the protracted waiting time. Since the issue of refugee is prone to be seen as an issue which can easily arouse mere sympathy rather than focusing on the problem itself with complicated cause relationship and objectivity, understanding the refugee issue requires more structural and political understandings.

1.4 Significance of research

The ultimate goal of this research is to understand the current refugee issue in the 'transit state'. The findings of the research would show the difficulty of resettlement and protection for refugees or even questioning the validity and the state compliance of the Refugee Convention. This topic will support the fields of refugee and forced migration studies which keep trying to arrange the way to solve the problem at the international level. Moreover, it could also be a contribution to raise the awareness of the international refugee crisis, the significance of international cooperation, and responsibility-sharing.

1.5 Structure of Research

The thesis is divided into five chapters. The first chapter, which is the introduction, offers the background of the research, research question for the research, research objective, and the significance of the research.

The second chapter, which is the theoretical framework, discusses some peer-reviewed researches from other scholars in connection with the transit refugee

issues. This chapter also discusses the international relations theory and concepts related to the issue of stranded refugees and asylum seekers in Indonesia.

The third chapter, which is the methodology, explains the research approach and method. This chapter also explains the means of data collection and data analysis that explains what kind of data is used, how does it collected, and what did the researcher do for the analysis.

The fourth chapter, which is the analysis, settles down to the analysis in order to answer the research questions. This chapter provides the factors of the delay of the onward movement for refugees and asylum seekers in Indonesia, and its impacts on both people and Indonesia by using the data collected regarding the topic.

The fifth chapter, which is the conclusion, concludes the research by summarizing the analysis that has been discussed in the fourth chapter.

