Political economy of pragmatic refugee policies in Indonesia as a transit country

Yanuar Sumarlan[1]

Abstract—After some influence by the Australian government through the Bali Process, Indonesia—out of its typical pragmatism-cum-flexibility type of approach to refugee issues—began obviously to apply a more securitization-based refugee and asylum-seeker policy in the early 2000s. This paper asks a simple question, "Has Indonesia been truly capable of (1) restricting refugees and asylum seekers' movement and (2) to processing the refugees' and asylum seekers' claims to concluding parts?" This paper argues that the alleged securitization-based policy on refugees or asylum-seekers has had little impact on refugee rights such as freedom of movement and the right to get a claim processed. The simple reason is that Indonesia has no capacity to launch such a paradoxical mix of iron-fist and refugee-spoiling policy. Through some historical accounts of how this iron-fist policy has come about, and how it actually has little impact on the right to claim to be refugees and asylum-seekers, this paper reveals the natural order of this set of policies has failed to restrict refugee movement and to fulfill their right to claim [to be refugees or asylum-seekers] to be processed. The paper finds that Indonesia's incapacity and thus its failure to limit freedom of movement and to expand refugee status determination has affected the overall achievement of fulfilling refugee and asylum-seeker rights negatively. In a way, this finding corroborates what Missbach (2017) found to be the Indonesian Government's "inconsistent and ad hoc approaches." As this paper has revealed by these facts, the national, regional and global actors and contributors of all kinds to the refugee and asylum seeker issue need to rethink the way to understand the policy stagnancy that this paper dubs a "fossilized refugee policy."

Keywords: rights to movement, claims to be refugees/asylum-seekers, Bali Process, Indonesia's refugee policy.

Asian Review 32(3), 2019, pp. 63-93.

Introduction

When the first Indochinese refugee crisis broke in the mid-1970s, right after the end of the Vietnam War, Indonesia quickly decided to be a 'broker' between the hundreds of thousands of refugees and asylum seekers wanting to evade the victorious communist regime and those third countries who were willing to accept them. The Indonesian Government, still fresh from its role in the invasion of East Timor, needed salvation—among other reasons—from its damaged reputation among its neighbors through a conscientious humanitarian response to a human rights crisis. Sixty-five nations suddenly threw their full support behind Indonesia's initiative to turn an island near Singapore into a refugee processing center for those who wanted to be resettled to willing third countries all over the world. Thinking that the whole tragedy would end within ten years (after 1979), the Indonesian authorities were soon caught up in a nasty surprise. After 1988, the boat people from Indochina had returned to the South China Sea to look for refuge and asylum in third countries; however, this time, the compassion of the third countries had dwindled.

This time, in the era categorized by "post-compassion fatigue," the third countries that had previously been so generous in providing asylum decided to add a screening process and a door through which to return refugees and asylum seekers to where they came. Then the concepts of detention, restriction of movement, the right to get claims processed, securitization of refugee issues, repatriation, and others began to appear in the refugee status determination parlor. Indonesia, in a way, had become the victim of its previous success in brokering between the players and actors that had come around later in the ASEAN theater of refugee conflict. Indonesia's evident lack of capacity to both restrict the movement of refugees and asylum seekers and to process/determine refugee and asylum seeker status has never been discussed nor exposed so far.

After some time, from the mid-1970s to the end of the 1990s, some authors and critics started to judge and comment on Indonesia's decision to be part of the hidden "brokerage" around this set of refugee issues. After a long period of discretion and observation, Indonesia's approach to its refugee policy as "inconsistent and *ad hoc*" (Missbach 2017, 34) because "it vacillates among a permissive *laissez-*

faire attitude that allowed thousands of asylum seeker to pass through Indonesia freely; a hasty and heavy-handed use of incarceration in an overcrowded system in keeping with the interests of Australian government funder; and a pragmatic shift to Alternatives to Detention (ATD)." Nethery and Gordy pointed out that the Detention system in Indonesia was an "incentivized policy transfer" (2014). Disagreeing that Australia is a "hegemon" that practices "burden-shifting" to its ASEAN neighbors, Kneebone (2015, 36) claimed that the supposed circuit of power relations could easily be broken through "circuit breakers" launched by ASEAN members or Indonesia in particular.

Vis-à-vis these sets of explanations, this paper attempts to offer a different perspective to expose Indonesia's failures and incapacity to deal satisfactorily with refugees and asylum seekers. In other words, Indonesia was merely a broker in an international or regional crisis for fulfilling its political-economic agenda. Indonesia's principled position in the refugee crisis has been stated once and will never be changed for a long time to come: Indonesia is merely a transit country, and the fact remains despite some devolutionary changes. All the higher expectations that other countries had put on Indonesia's shoulder were merely the product of activities that had been set to create the illusion of a capability to deal with refugees and asylum seekers.

This paper is made up of two premises and one conclusion. The first premise is that "Indonesia has little capacity to restrict freedom of movement as the sheer size of refugee waves is beyond its capacity to handle." The second premise would be as follows: "For some reason, the Indonesian authorities are only trying to mobilize external resources to fulfill refugee rights to have their claims determined and asylum seekers to have resettlement in a third country." The following simple conclusion concludes this simple syllogism. The "simple supports through the training of officers to detain or facilities to keep refugees or asylum seekers in detention centers indefinitely (official or community-based) are not sufficient to deal with the problem of never-ending waves of refugees flowing through Indonesia." Without real support in terms of refugee movement restrictions (which is not encouraged by any international standards) and the fulfillment of claim processing (which is given by the third countries), Indonesia is helpless."

After this Introduction, this paper is divided into the following four parts. First, the paper begins with the earliest approach of Indonesia's

official policy on refugee management at the end of the Vietnam War that was fertile ground for a set of similar security-based approaches to refugees and asylum-seekers. Second, the paper shows the dialectical metamorphoses of Australia's refugee policy into the early 90s. Third, the paper reveals the historical phases of Indonesia's refugee policy under the allegedly strong influence of Australia's immigration policy—besides Indonesia's political and economic agenda— since the 1970s to 1990s. This revelation should be an eye-opener as to why the securitization policy has always been claimed as "close" to Indonesian policy-makers' hearts—although it is not. *Fourth*, the paper analyzes the real [in]capacity of Indonesia in its refugee policy devolution to deal with the two most important rights of refugees and asylum seekers: freedom of movement and claims determination.

Indonesia's earliest opening gambit: An island for Indochina crises

Before the fall of Saigon in April 1975, around 140,000 Vietnamese who had been associated with the former South Vietnamese Government were evacuated to resettle in the United States (UNHCR 2000, 81). This US-organized evacuation was followed by the personal exodus of Vietnamese by boat to Thailand (5,000 refugees), Hong Kong (4,000 refugees), Singapore (1,800 refugees), and the Philippines (1,250 refugees) (UNHCR 2000, 81). The Vietnamese government evicted the fleeing refugees (70 percent of whom were of Chinese descent) through scare tactics ("anti-bourgeoisie and reactionary") by forcing them into concentration camps for forced labor (Fandik 2013, 165). The UNHCR, for example, opened an office in Beijing and donated USD8.5 million to the Chinese Government to settle more than 250,000 Vietnamese refugees by the end of 1979 (UNHCR 2000, 82). At the end of 1978, around 62,000 Vietnamese boat people were scattered in camps throughout Southeast Asia (UNHCR 2000, 82).

On 20-21 July 1979, 65 governments answered the invitation of the UN Secretary-General to an international conference in Geneva on Indochinese refugees (Robinson 2004, 319). When worldwide resettlement pledges increased from 125,000 to 260,000 [resettlements], Vietnam agreed to try to halt illegal departures of its distressed population (Robinson 2004, 319). The first refugees or boat people

arrived in Tarempa Island in Riau Province (92 refugees) on 19 May 1975 on their "way" to Singapore; the first group of refugees who wanted to stay in Indonesia's territory arrived on 25 May 1975 in a horrible condition in Pulau Laut (Laut Island) in the Natuna Islands (Fandik 2013, 166). Wave after wave of incoming refugees kept local government units very busy. Actually, on 28 April 1975, Lt.Gen. Poniman, the commander of naval territorial defense, mobilized an island in Riau Province called Pulau Bintan to be accommodation for the incoming Indochinese refugees (Fandik 2013, 167).

After the Geneva conference on Indochinese refugees, Indonesia and the Philippines pledged to establish regional processing centers to speed up resettlement, and new pledges were made to the UNHCR for around USD160 million in cash and in-kind (Robinson 2004, 319). Australia, for instance, decided to admit almost 150,000 Indochinese refugees out of over 2,000,000 refugees and asylum-seekers after the end of the Vietnam War (Coughlan 1991, 84)[2].

Complaining loudly in June 1979, five members of ASEAN (Indonesia, Malaysia, the Philippines, Singapore, and Thailand) warned that they had "reached the limit of their endurance and decided that they would not accept any new arrivals" (in a joint communique at the 12th ASEAN Ministerial Meeting in Bali, 28-30 June 1979) (UNHCR 2000, 83). The UN Secretary-General quickly called an international conference in Geneva on 20-21 July 1979 and invited 65 governments. With no formal commitment made regarding asylum, this Conference endorsed the general principles of asylum and non-refoulement (Robinson 2004, 320). In this case, countries of first asylum, nevertheless, expected that no refugees would stay in their territories for more than a specified period. A *quid pro quo* was set: first, asylum countries would keep refugees, and second, asylum take them later ('an open shore for an open door') (Robinson 2004, 320). The pushback of refugee boats was reduced, and arrival rates fell as Vietnam stopped clandestine departures to allow the direct departure of willing refugees. After around 450,000 Indochinese refugees were resettled in Southeast Asian camps within 18 months (from 1980 to 1986), refugee officials began to be optimistic about solving this regional crisis (Robinson 2004, 320).

To follow up on the UNHCR conference on Indochinese refugees in July 1979, the late President Soeharto met Thailand's Prime Minister,

Kriangsak Chomanand, and sent Foreign Ministry Kusumaadmadja in April 1979 to Geneva to meet UNHCR Commissioner Paul Harthing (Fandik 2013, 167). Indonesia's proposal to offer an island (either Rempang or Galang Island) as a refugee processing center was agreed; on 15-16 May 1979, UNHCR opened an office in Jakarta and invited 24 countries to set a processing working team made up of Indonesia's Public Works Department, Ministry of Defense and Ministry of Internal Affairs (Fandik 2013, 167). On 2 July 1979, the Ministry of Defense appointed a team called the Vietnam Refugees Management (P3V or *Penanggulangan dan Pengelolaan Pengungsi Vietnam*) led by Maj. Gen. Moerdani and run by one Navy Rear Admiral and a police Lieutenant Colonel (in Presidential Decision No. 38/1979/11 September 1979)[3]. All refugees scattering around Indonesia's places and islands were relocated to Galang Island to isolate and avoid the refugees' impact on the local population. Japan's Foreign Minister, Sunao Sonoda, offered USD 57 million to all countries that built shelters for Vietnamese refugees (Fandik 2013, 167). The plan was to build barracks to hold 100 refugees (for 10,000 refugees in the first wave of development of barracks with some electricity and another 10,000 refugees for the next round).

Western countries were growing fatigued and suspicious of the Vietnamese boat people's motives for leaving their motherland (UNHCR 2000, 86). In the late 1980s, international willingness to resettle all Vietnamese asylum seekers waned, and resettlement numbers hardly kept pace with the rate of arrivals in the first asylum countries (ASEAN members). In mid-1987, suddenly, the arrivals of Vietnamese began to rise again. Thousands of Southern Vietnamese discovered a new route that took them through Cambodia and then to Thailand's east coast (UNHCR 2000, 88). Tens of thousands of others from North Vietnam took another route to Hong Kong, and more than 18,000 boat people poured into Hong Kong (UNHCR 2000, 88). On 15 June 1988, the Hong Kong administration announced a plan to detain any Vietnamese arriving after that date to await a "screening" process; Malaysian authorities resumed the pushback against Vietnamese boats toward Indonesia in May 1989. The regional and international consensus set in 1979 was collapsing; another formula was required, although this time, it had to preserve asylum but without guarantees of resettlement [for refugees] (UNHCR 2000, 88).

Thus, in June 1989 began the era of The Comprehensive Plan of Action (CPA) to reconfirm some of the elements of the 1979 Agreement such as the commitment to preserve the first asylum, to reduce clandestine departures and promote legal migration, and to resettle refugees in third countries (UNHCR 2000, 88). Some new elements were introduced such as the commitment to institute regional refugee status determination procedures and to return those whose applications were rejected (UNHCR 2000, 88).[4]

Despite the massive mobilization of military resources and manpower to deal with this Indochina refugee crisis in the mid-1970s to late-1980, the Indonesian government under the strongman Gen. Soeharto appeared to de-emphasize the securitization of the refugee issues.

Australia's quick dialectical metamorphoses of refugee policy

Although a signatory to the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, Australia narrowed its interpretation of the term refugee after the Indochinese refugee experience (Coughlan 1991, 85). This section explains the evolution of Australia's refugee policy after 1996 (under Prime Minister John Howard of the Liberal Party) and securitization. This history of policy evolution over time is essential as the Australian Government is one of the most significant sources of capacity for the Indonesian Government to deal with refugees and asylum seekers in terms of a willing third country to resettle the refugees stranded indefinitely in Indonesia.

The term "securitization" appeared after the Liberal Party Government led by John Howard (1996-2007) began to tighten the treatment of refugees and asylum seekers to accommodate the perennial 'fear' (skepticism and rejection against non-Anglo-Celtic immigrants) held by Australians. During the Howard Government, for example, Watson (2009) claimed that the issue of boat arrivals after the Tampa incident was securitized successfully by the Government. When the Labor Party Government led by Kevin Rudd replaced the Howard Government in 2007, however, this new Government (2007-2010, 2010-2013) de-securitized the issue of asylum seekers (McDonald 2011). Eventually, only a sharp increase in the refugee influx in 2009

forced the Labor Party-led Government to take security-centered measures. When the Liberal Party-led Government resumed power in 2013 (until recently), the Australian Government re-securitized the asylum seeker issues (Paulsen 2016, 64).

These changes and transformations of Australia's refugee and immigration policy have seeped into Indonesia, among others, through a process called "incentivized policy transfer" (Nethery and Gordyn 2014) or "exporting detention" (Nethery, Rafferty-Brown, and Taylor 2012).

Contextual devolutionary transformation of Indonesia's refugee policies

For simplification purposes, this process of transformation will be divided into five landmarks or turning points of policy life. This type of staging of the policy lifecycle is picking the stages offered by Kneebone (2014, 31-35) to Indonesia's refugee policy during a rather short period between the early 2000s and 2015: Pragmatic Acquiescence for Securitization (2001-2008), Prevarication for Conflicted Responses (2008-2013), and the Regional Approach to the Andaman Crisis (2015).

This paper marks the refugee policy of Indonesia into five critical phases: (1) the Indochina Crisis (1975), (2) Mandatory Detention-cum-Tolerance, The Third Wave (1992, 1999-2001), (3) the influence of Australia's Detention-Centered Policy (2009/2011), (4) the Andaman Crisis (2015), and (5) President Jokowi's Political Turn (2017). This section will explain these stages. However, these phases do not mean that every phase marks a fundamental turn or change from the previous phases. Indonesia's governments' basic tenet on refugee issues has been constant.[5]

The more critical issue connected with the evolution of Indonesia's refugee policy over time is the impact of these transformations and changes on the two most important or key rights of refugees and asylum seekers (MacIntosh 2012, 181): to have their claim determined (claim determination) and not to be detained (freedom of movement).

The Indochina crises (1979-1992)

Pre-compassion fatigue (1979-1989).

Galang Island (80 sq.km) was set to be the refugee processing center of three refugee sites (camps) in an area of 16 sq.km. The UNHCR equipped the Galang Camp with a camp administration office, PMI (Indonesian Red Cross) Hospital, schools, a Catholic Church, a Buddhist temple, a cemetery, and a Youth Center (set up and run by refugees). The Camp was divided into three sites: Site IA, Site IB, and Site II to accommodate about 250,000 boat people from Cambodia, Laos, and Vietnam from 1975 to 1996. With the full support of many countries, the UNHCR and other institutions, and resettlement pledges for 125,000 to 260,000 refugees (and pledges totaling about USD160 million), Indonesia had no trouble in processing the refugees' claim determination through UNHCR assistance. In fact, more than 450,000 Indochinese refugees were resettled from Southeast Asian camps within 18 months (Robinson 2004, 320).

When the refugees were forcibly relocated from the scattered islands by Indonesian naval vessels, their freedom of movement was severely curtailed. Nevertheless, the refugees' right to their asylum seeker or refugee status to be determined was widely respected. From the estimated 145,000 to 250,000 refugees who had passed through Galang Island, around 132,000 had resettled to a third country; around 6,000 to 8,000 long-time residents remained in the camp in 1996 (most were later forcibly repatriated to their home country) (McBeth 1994). Although the processing center was run with a heavily militarized system and security-centered methods, Indochinese refugees were getting their claims or right to be determined. Furthermore, the then President Soeharto only used the term "refugees" to represent the forced migrants and never "illegal immigrants" (Lee 2015, 44). The Refugee Processing Center in Galang Island was fully operational in December 1980 (Hargyono 2015).

Post-compassion fatigue (1989-1992).

When Vietnamese arrivals were peaking again in 1987 and 1988, most countries knew that the old consensus was crumbling. Facing a rising tide of asylum seekers at their doors and convinced that Indo-

chinese refugees no longer deserved automatic refugee status, Western countries reduced their resettlement quotas and set more selection criteria (Robinson 2004, 320). Another Conference on refugees was set in June 1989 in Geneva; this time 70 governments agreed to adopt a new regional approach, which was known later as the Comprehensive Plan of Action (or CPA)[6] (Robinson 2004, 320). This Plan finally established inter-locking and inter-dependent commitments among the first asylum states in Southeast Asia, the resettlement countries, and the governments of Vietnam and Laos. Some commitments were similar to the ones of the 1979 agreement, such as the preservation of the first asylum, reduction of clandestine departures [of refugees], promotion of legal migration, and resettlements of refugees in third countries (Robinson 2004, 320). However, this new Plan offered a set of radically new ingredients: screening (Refugee Status Determination) and repatriation (voluntary and mandatory).

The last two ingredients drastically reduced the chances for refugees' success in getting resettlement in a third country. Those arriving after 17 March 1989 had to undergo a procedure to determine their genuine refugee status under the Refugee Convention of 1951; asylum seekers who arrived after that date were facing the chance of being repatriated to their home country if the determination process failed (Hargyono 2015). In June 1993, out of 9,000 refugees who had not been granted resettlement in the third country, only 2,000 agreed to return home to Vietnam (Hargyono 2015).

Around this time, Australia's Hawke Government was committing itself to resettle 11,000 long-term Vietnamese [in refugee shelters on their way to Australia] boat people during 1989-1992. Nevertheless, when some boatloads of not only Vietnamese but also Cambodians arrived quietly on Australian shores in late 1989, both the Australian public and Government were agitated. Calling these refugees "economic migrants" and "queue jumpers," in 1992, the Australian Government decided to announce a new method of mandatory detention for all types of unlawful non-citizens (Phillips and Spinks 2013). This year marked the seeds of the beginning of the heavy influence of Australia's refugee policy on its Indonesian counterpart.

Noticing the reduced support for its relaxed approach to the refugee crisis in this post-compassion fatigue stage, Indonesia reignited some moves to re-securitize the issue through a new launch of discursive

practices by some agencies, namely the Police and the Directorate-General of Immigration. To attract dwindling resources from the tired third countries, Police and Immigration officials fired some salvos through media to demand a budget increase to tackle the "threat" of the transit forced migration (Lee 2015, 49). These two agencies, however, worked their discursive practices through different themes: Immigration officials typically focused on the demand for basic needs, faster status processing procedures or refugees' escapes from camps; Police officials pounded their media messages on the sophistication of people-smuggler networks run by international actors, locals, state apparatuses and corrupt security forces (Lee 2015, 49). The two agencies, nevertheless, shared something in common. Both argued through rehearsed media reports that the geographical condition of Indonesia was peppered with "ratlines" (or hidden passages) ready to be used by the people-smuggling networks (Lee 2015, 50). Both agencies kept their media statements to three themes: lack of detention centers' quality and quantity, lack of funding, and lack of personnel.

As part of the legal history related to the repercussions of the Comprehensive Plan of Action of June 1989, Indonesia's refugee policy evolved into a very tolerance-based set of treatment for refugees or asylum seekers who were living in its territory. Immigration Law No. 9 of 1992 epitomized this security-cum-tolerance-based approach to deal with non-criminal refugees or asylum seekers. Allowing the UNHCR to build an office in Jakarta for accommodating the Galang Island's Refugee Status Determination during the Indochinese refugee crisis (1975-1992), the Indonesian Government let people--seeking refugee status--to apply in the UNHCR Jakarta's office that would later issue UNHCR attestation letters or identification cards. These cards or letters protected the refugees and asylum seekers living in Indonesia while waiting for the results of their claims (resettlement) (Taylor and Rafferty-Brown 2010a). Although appearing as tolerant, Indonesia provided refugees or asylum seekers little chance for local integration (Taylor and Rafferty-Brown 2010a). Some asylum seekers and refugees had been residing in Indonesia for many years in a kind of limbo or death or 'dying' slowly. This trouble had motivated asylum seekers and refugees to pay people smugglers and to travel to Australia by boat to secure a more meaningful life (Taylor and Rafferty-Brown 2010b). In a way, Indonesia was a place where a lot of residing asylum seekers

and refugees were waiting for their chance to go to Australia illegally—through a set of well-organized human smuggler networks—whenever the chance appeared[7].

Half-mandatory detention-cum-tolerance approach (1992-2001)

Immigration Law No. 9 of 1992[8] itself was using "detention", although loosely, for foreign nationals. For example, this Law provides that a foreign national in Indonesian territory could be placed in immigration detention when (1) they did not have a valid immigration permit, (2) they were awaiting expulsion or deportation, (3) they had filed an objection to an immigration action and were awaiting a ministerial decision, and (4) they were subject to immigration law enforcement, and (5) they had completed a sentence or period of punishment but had not yet been repatriated or deported (Article 44:1, Article 31 of Government Ordinance No. 31 of 1994). However, in 'particular circumstances,' a person could be accommodated outside of detention (Article 44:2 of Law No. 9 of 1992); in practice, Indonesian officers rarely detain asylum seekers (Lawyers Committee for Human Rights 2002, 45-47).

Research in Australia and at a global level has revealed that detention policies affect very little in asylum seekers' decision-making processes to migrate (Koser 2010; Richardson 2010). Furthermore, Australian officials attributed the failures of Australia's domestic policies to the ability of asylum seekers to live in relative freedom in Indonesia, thus allowing these people to set up and wait for opportunities to use people-smugglers syndicates to come to Australia (Nethery and Gordyn 2014, 186). Australia also actively encouraged Indonesia to detain asylum seekers in the Immigration Detention Centers. In 1995, as part of Australia's role in supporting Indonesia in the East Timor case, Indonesia signed a surprising "security agreement" with Australia that shocked its ASEAN neighbors.[9] This agreement, however, went from bad to worse when, in 1998, Indonesian President Habibie opened the chance for East Timor to either remain part of Indonesia or become independent. When a referendum through ballots (mediated by UN Mission in East Timor) produced the decision to be independent, civil unrest ensued. Australia sent humanitarian intervention to East Timor with 4,500 personnel of the Australian Defense Force; in September 1999, the relationship between Australia and Indonesia

was at rock bottom (Paulsen 2016, 48). This sour relationship was quickly restored through diplomatic and ministerial missions from both countries from 2000 to 2001 (East Timor was freed in 2002).

Wave after wave of refugees from the Middle East coming during the late 1990s, the terrorist attack of 9/11, and the Bali Bombings suddenly regrouped both Australia and Indonesia into another form of the alliance into the early 2000s. The flow of asylum seekers from the Middle East began pouring in around 1999. Indonesia's proximity to Australia (around 120 nautical miles from Java's southern shore to Australia's Christmas Island) turned the archipelagic state into a porous transit point before refugees' embarking on sea journeys to Australia. Taking measures to discourage these waves of boat people, Australia engaged in intense cooperation with Indonesia by producing some laws and policies (Crock et al. 2006). Accidentally, just a few days before the 9/11 Attack, Australia sent an envoy of the Foreign Minister, Defense Minister and Immigration Minister to Jakarta on 6 September 2001 to secure future cooperation with Indonesia (Paulsen 2016, 49). Four months after the 9/11 Attack, Australia and Indonesia signed an MoU on combatting international terrorism through cooperation, including intelligence sharing and building capacity between government agencies (Kemlu 2015). Two terrorist bomb attacks in Bali's tourist spots on 12 October 2002 (202 lives taken), the JW Marriot Hotel bombing in 2003, the Australian Embassy bombing in 2004, the second Bali bombing in 2005 and the JW Marriot and Ritz Carlton Hotels bombings in 2009 finally cemented a greater cooperation between Australia and Indonesia particularly in counter-terrorism (Paulsen 2016, 50). The landmark of this big cooperation was the Lombok Treaty signed in 2006 to cover defense, law enforcement, counterterrorism, intelligence, maritime, aviation, non-proliferation of weapons of mass destruction, emergency cooperation, International Organization cooperation, people-to-people cooperation and community understanding (Kemlu 2006).

These agreements and cooperative gestures were smoothly precedented in the late 1990s through the mid-2000s through two important arrangements between the two countries: The Regional Cooperation Arrangement (RCA) in 2000 and the Management and Care of Irregular Immigrant Project (MCIIP) in 2007[10]. The Regional Cooperation Arrangement (between the Australian and Indonesian Govern-

ments with the International Organization for Migration or IOM) dictated that the Indonesian authorities intercept people thought to be planning to travel irregularly to Australia or New Zealand and then refer these people to IOM for 'case management and care' (IOM Indonesia 2010). Refugees or asylum seekers who revealed their wish to claim asylum were referred by IOM to the UNHCR that later determined such claims according to UNHCR's mandate (Nethery et al., 2012, 95). The IOM maintained material supports for these individuals pending the determination of their asylum claims and the finding of any durable solution; the IOM also offered repatriation assistance to individuals who wished to return home any time (under the funding by Australia) (IOM Indonesia 2010).

Thus, the smooth path to the full mandatory detention was prepared long before the Immigration Law of 2011 (to run this "new" approach) was launched. For example, Indonesia let most asylum seekers who fell under the RCA to live in Australian-funded accommodation under IOM management in five designated areas: Cisarua/ Cipayung (West Java Province), Jakarta (DKI Jakarta Province), Medan (North Sumatera Province), Pontianak (West Kalimantan Province) and Lombok (West Nusa Tenggara Province (Stenger 2011). Moreover, people living in the IOM accommodation had to respect curfews (Biok 2009), agree to be monitored as to their whereabouts (UNHCR 2005), and need travel permission from their area of residence (Nethery et al. 2012, 95).

Full mandatory detention (2009-2015)

After quite some time of "warming-up," the vision of a full-blown version of a full mandatory detention system was begun through the new Immigration Law No. 6 of 2011 (enacted in May 2011 to replace the former Immigration Law No. 9 or 1992). This new Immigration Law of 2011 had at least five differences compared to its 1992 Version (Nethery et al., 97-98). First, if the 1992 Immigration Law stated that officials *may* deny entry to foreign nationals, including those without valid travel documents, the 2011 Immigration Law stated that officials *shall* deny entry to certain foreign nationals and those involved in international crime, prostitution, human trafficking, and people smuggling activities (Article 13:1) (Nethery et al., 2012, 97). The change in the wording might indicate the removal of discretion from

officials over whether to detain or not to detain a suspect. Second, if the 1992 Immigration Law stated that 'in particular circumstances,' a person may be detained outside of the detention centers (Article 44:2), the 2011 Immigration Law provided that any foreigner in Indonesian territory be placed in immigration detention in cases where the foreigner (a) had no valid immigration permit or travel document, (b) was subject to immigration law enforcement or the cancellation of any permit, (c) was waiting for expulsion or deportation (Article 83:1). Moreover, the 2011 Immigration Law only allowed accommodation outside of the detention for children, sick people, women about to give birth, and the victims of human trafficking or human smuggling (Articles 83:2 and 87).

Third, the Immigration Law of 2011 was made in eight years with its passage owing much to the persistent diplomatic efforts of the Australian Government over the period (Alford 2010; Brown 2011). The focus was on combatting people smuggling and human trafficking that the previous 1992 Immigration Law lacked; some provisions appeared to be modeled on Australian immigration law (Nethery et al. 2015, 97). Fourth, noticeably, the Indonesian language used in the new 2011 Immigration Law is very clearly derived from English equivalents such as detention referred to as "*detensi*" or "*pendetensian,*" immigration detention houses as "*rumah detensi imigrasi*" and detainees as "*deteni*" (Nethery et al. 2015, 97). Fifth, for the Indonesian Government, asylum seekers have never been a policy priority as they have been in Australia; the older 1992 Immigration Law allowed the detention of asylum seekers; yet, Indonesian officials rarely did that until the Australians began to encourage such an action (Nethery et al. 2015, 97).

Shortly before the application of the newer 2011 Immigration Law, for example, Australia funded both the UNHCR and IOM for budget year 2008-2009 as much as USD807,727 to the UNHCR for capacity-building, USD1.6 M to the IOM for interpreting services for displaced persons, and USD386,000 to the IOM for educational and social services for refugees and irregular migrants in Indonesia (Kneebone 2017, 34). Then later, in 2014, IOM Indonesia (2014) reported 13 Immigration Detention Centers in 13 provinces, operating under "arbitrary rules." However, the deterrent effect of such anti-smuggling laws was debatable (Missbach, 2015). (By June 2015, Indonesia had

5,277 refugees and 7,911 asylum seekers registered in UNHCR Indonesia as reported by the UNHCR (2015).)

The Andaman Sea crises (2015)

Some estimated 6,500-8,000 refugees had departed from Myanmar and Bangladesh by boats in 2015 alone (Petcharameesre et al., 2016). In May 2015, the authorities found 26 bodies in the mass grave of smuggled Rohingya near a trafficking camp in southern Thailand, and this signaled an emergency to tackle.[11] Without authority, fisherfolks from a village called Seunuddon near Lhokseumawee port brought 578 passengers to shore; later Indonesian authorities warned them not to engage in such rescue operations (McNevin and Missbach 2018, 295). Despite the warning, fisherfolks from two other villages near the port of Langsa brought in more boats to land on 15 and 20 May 2015. Totaling 1,807 passengers (578, 820, and 409 people per boat), the saved boat people reported 23 of them had perished on board on the way (UNHCR 2015b). Most of the 500 Bangladeshi nationals were repatriated to Bangladesh, but the rest (Rohingya) were taken to Langsa and housed in a converted warehouse in Langsa Port (Thom 2016, 47).

The three most affected countries (Malaysia, Thailand, and Indonesia) began to work cooperatively to broker a solution (Kneebone 2017, 36). The Ministers of Foreign Affairs of these countries met on 20 May 2015 ahead of an international meeting on 29 May to discuss this "irregular movement of people" into the countries (Kneebone 2017, 36). Trying to "find a solution to the crisis of influx or irregular migrants and its serious impact on the national security of the affected countries," the meeting produced a joint statement that "the three countries had taken necessary measures … on humanitarian grounds, beyond their international obligations"[12] as the issues "cannot be addressed solely by these three countries" (Kneebone 2017, 36).

This issue had been prolonged because the focus of the Bali Process (reconvening in March 2016) was a mere "Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime" (Bali Declaration on People Smuggling, Trafficking in Persons, and Related Transnational Crime or the Bali Declaration, 23 March 2016). The Declaration itself was labeled as "Australia's initiative to counter this terrible trade in human beings" (Kneebone 2017, 37). As Indonesia itself was burdened with around 13,000 refugees and asylum

seekers waiting in limbo for resettlement, the Indonesian Foreign Minister Retno Marsudi could only call for refugee-receiving countries to be more receptive to the migrants who had been waiting for resettlement—by the way, the Declaration produced no outcome on resettlement (Kneebone 2017, 37). Then soon, the scene moved to the next stage where the Indonesian President Jokowi decided to "change" the rules of the game slightly. The country (Indonesia) needed a safeguard to face more waves of refugees from never-ending humanity crises in Myanmar-Bangladesh border areas.

President Jokowi's political turn (2017)

As the much-celebrated Presidential Regulation No 125 of 2016 was signed on 31 December 2017 by President Jokowi, the term refugee as in the 1951 Refugee Convention was *de jure* accepted in the Indonesian legal system. This Presidential Regulation (or *Peraturan Presiden* or *Perpres* in local terms) decentralizes authority to the provincial governmental units to accommodate refugees temporarily. Nevertheless, Baskoro (2018) reported that some immigration officers complained that although they had already called the provincial or district governmental units for help, the governmental units' responses were very poor. This Regulation No. 125 of 2016 sets a presumably "better" set of refugee and asylum seeker policies such as rescue procedures at sea, standard detention facilities, and shelters with health and religious facilities (Afghanistan Analysts Network 2018). The individual heads of detention centers and shelters, however, were still in charge of Standard Operating Procedures, and this Regulation mentioned no provisions that address refugee integration. The Regulation's Article 26 merely stipulates that shelters for refugees should be located near a health clinic and religious service, but no other facilities are mentioned (Afghanistan Analysts Network 2018).

Analysis and conclusion: The reasons and Indonesia's true capacity to fulfill rights to claim determination and restrict refugees' freedom of movement

During the first stage of the Indochinese refugee crisis (1975-1996), the capacity of Indonesian officials to restrict refugee movement and determine refugee status claims was so much reliant on the

external resources. To ensure that the refugees and asylum seekers were kept in a place, for example, the Indonesian authorities set three sites/camps in a 16 sq.km-large complex with facilities like religious services, churches, temples, schools, barracks for refugees, barracks for staff, the UNHCR office, etc. These facilities were set in 1980 and, in reality, served around 250,000 to 260,000 refugees. The capacity of the officials to monitor the refugee movement was severely curtailed because of a lack of personnel and equipment to cover thousands of islands that were spread widely in territories of at least three countries (Malaysia, Singapore, and Indonesia). The fulfillment of claims determination in the earlier part of the Indochinese refugee crisis or pre-compassion fatigue (1975-1989) was smooth and relatively fast with the support of many third countries that were willing to resettle these refugees. During this "easy" time, the Indonesian authorities, with their agencies, tended to de-securitize the immigrant issue in their media stunts by labeling the refugees openly as "refugees" who needed "humanitarian" assistance.

Unleashing a media content analysis, Lee (2015, 40) offered five reasons for Indonesia's benign refugee policy during this Indochina Crisis (in two phases, i.e., pre- and post-Comprehensive Plan of Action): subconscious drivers, cost-benefit calculation, good public relations, attracting resources and maintaining legitimacy. Around a decade before the Vietnamese boat people arrived in Indonesia's territory, a failed coup allegedly staged by the Indonesian Communist Party was crushed by President Gen. Soeharto who later portrayed communists as "evil." Seeing the poor Vietnamese were cruelly treated by a communist regime, arguably it served as the subconscious driver for the Indonesian elite not to securitize the migrants fleeing the communist Vietnam government (Lee 2015, 40). Karyotis (2012, cited by Lee 2015, 41) claimed that "subconscious drivers" in policy-making might be based on certain values which might have come from Indonesia's state official ideology called *Pancasila* (Five Principles: Monotheism, Humanity, Unity in Diversity, Representative Democracy and Social Justice).

"Cost-benefit calculation" appears within three themes. First, the Indonesia Government's non-security approach in handling Indochinese refugees was intended to neutralize the negative portrayal of Indonesia for the annexation of East Timor (Lee 2015, 41). Second,

a non-security approach fitted the regional and global atmosphere that allowed for attracting resources. Third, the approach was meant to maintain state legitimacy by showing that the government was controlling the inflow and outflow of forced migrants; it also showed the government's active role at the global and regional levels (Lee 2015, 41).

"Good public relations" were represented by providing a refugee processing center and taking an active role in solving the refugee issues in the Southeast Asia region. The vast majority of Indonesian government officials, especially the Minister of Foreign Affairs, highlighted the humanitarian aspect of the Indochinese refugees' issues (Lee 2015, 43).[13] The Indonesian government's decision was "soft" compared to that of other neighboring countries like Singapore (total rejection), or Thailand and Malaysia (rejection, pushbacks after increasing surges of refugees in 1979). Despite the refusal to openly accept the link among the benign refugee policies, the Foreign Affairs Ministry's, the Military's and Gen. Soeharto's repeated insistence on a "humanistic" approach to helping Indochinese refugees provided enough "consistency" (Lee 2015, 44). An official openly announced that "offering an island could elevate Indonesia's position because it was a humanitarian offer" (Tempo Magazine 31 March 1979).

"Attracting resources" from the international community was one of the motivations for the Indonesian government to de-securitizing the issues of Indochinese refugees (Lee 2015, 45). The increase in resettlement quotas from developed countries was important to ensure that all refugees would leave Pulau Galang as soon as possible (Lee 2015, 45). In the news reports, Indonesian officials proposed USD18.5 million for the Refugee Processing Center in 1979; the representatives of 24 countries like the US, Japan, and Australia accepted the proposal (Tempo Magazine 20 May 1979, Kompas 16 May 1979 cited by Lee 2015, 45). Not only care for refugees but also financial support were channeled into the development of facilities on the island and its economic activities; the Indonesian Navy also worked as suppliers of refugees' food (Tempo Magazine 1 March 1980 cited by Lee 2015, 46).

"Maintaining legitimacy" meant that a centralized authority to isolate and manage refugees—who were mostly Vietnam's Hoa minority ethnic or Chinese descendants—was very important when the suspicion against anything Chinese was high (after the alleged

failed coup in Jakarta 'supported' by China's Communist Government in 1965) (Lee 2015, 47). Soon after 'victoriously' stopping the coup, Gen. Soeharto took power and suspended diplomatic relations with China in October 1967 until 1990. The ways in which the Indonesian government highlighted the fact that the issue of refugees was not easy to handle (but still under Government's control) sent a message that the Government was still comfortably in control (Lee 2015, 47).

This discursive analysis by Lee (2015), however, only claimed that the de-securitization of refugee issues by the Indonesian Government was launched deliberately on the media discourse of a few actors among the rank and file of the Government at that time. At the practical level, the enormous size of military and civilian resources mobilized for the single purpose of controlling refugee movement and of securing the fulfillment of investigation of their asylum-seeking or refugee status claims spoke volumes about the high alertness in dealing with such security-relevant issues. Furthermore, ten years after the first wave of Indochinese refugees, the Indonesian Government, just like other governments, suffered from "compassion fatigue" (coined by Coughlan 1991). The Indonesian Government returned to securitize the refugee issues both at a discursive level (labeling refugees as "illegal immigrant") and an implementation level of forced repatriation (scrapping the *non-refoulement* principle) (Lee 2015, 49-55).[14]

This smoothness and willingness from the third countries went down sharply during the post-compassion fatigue time (after 1989) when Vietnam was failing to keep its earlier commitment to monitor illegal departures of its people (from Vietnam or Cambodians or Laotians from conflict areas where the Vietnamese were involved). When the usually open third countries like Australia or Hong Kong decided to set a screening process to exclude "economic migrants," these countries also reduced the refugee intake. Malaysia even resumed its usual "pushbacks" against any boats that came to its shores. Against the protests of the US and other big countries, ASEAN members agreed to re-open the refugee repatriation system either voluntarily or mandatorily for those who failed to pass the screening processes. Obviously, the capacity of a transit country to deal with refugee and asylum seeker flows was mainly reliant on the willingness of the third countries to absorb the refugees and the cooperation of the home countries to accept their fleeing citizens back. As Indonesia has never

ratified the 1951 Refugee Convention, it fully allowed the UNHCR (and the IOM or other capable institutions) to process the refugee claims and then set any resettlement process for asylum seekers to any third country (Taylor and Rafferty-Brown 2010b, 145-157).[15]

During the troubled time of the post-compassion fatigue, the Indonesian authorities, through the Police force and Directorate-General of Immigration, began the discursive practice of securitization of the refugee issues. The media messages that these two agencies kept sending were "lack of personnel, lack of facilities, and lack of funds" to keep up with the increasing "threat." The Indonesian authorities returned to their usual labeling of refugees as "illegal immigrants" and the discursive practice and treating them harshly with a kind of anti-*nonrefoulement* action through a policy of "forced repatriation."

When the stage of half-mandatory-cum-tolerance began in 1992 to 2001 through an Immigration Law of 1992 that allowed ample room for officials not to detain a foreign suspect under "particular circumstances," research in Australia linked the failure of Australia's policy to curb the irregular movement of refugees there to this loosely-applied Immigration Law of Indonesia. The refusal of Indonesian officials to detain all foreign suspects spoke volumes about the inability of the officials to restrict the refugees or asylum seekers' movement (or to pin them down somewhere with sufficient facilities) and to fulfill their rights to have their claims processed. Nevertheless, knowing that this loose approach by the Indonesian authorities would create a pool of refugees or asylum seekers eager to find their ways to Australia, the Australian authorities quickly sent envoys to Jakarta to offer some assistance (in funds or in kinds) for Indonesians to curb and detain the refugees from making movements. For some years after 1992 and 2011, despite the worsening relationship between Australia and Indonesia around 1999 to 2002, Australia successfully convinced the Indonesian Immigration to build or refurbish its 14 main detention facilities in 14 provinces ("detention facilities" can cover prisons, police stations, warehouses, or any places deemed proper to house refugees and asylum seekers).

These detention centers and other facilities and services to detain the refugees and asylum seekers in Indonesian territory finally got full-blown activation under the fresh Immigration Law No. 6 of 2011. Overcrowding, among other things, is a significant problem with some-

times reports of 25 refugees being crammed in two rooms supposedly for 11 people or 59 detainees staying in a room for 30 (Nethery et al., 2012, 100). This massive problem has led to even further incapacity to monitor or limit the movement of the detainees in every Detention Center. Australia's decision to stop accommodating asylum seekers or refugees who pass through Indonesia after July 2014 broke most of the capacity of Indonesian Immigration to provide rights of claims determination despite the existence of the UNHCR and IOM in Jakarta and other places. Indonesia was left alone to deal with the detention of refugees, to limit their freedom of movement and the right to get claims determined or processed.

When these two capacities had been cut off almost totally, in 2015, another wave of refugees in boats from Myanmar and Bangladesh became the straw that broke the camel's back. During the so-called Andaman Sea Crisis, Indonesia quickly mobilized its closest neighbors Malaysia and Thailand to solve the crisis through a call regionally (ASEAN) and internationally for another meeting. The Bali Process, however, reconvened with a cold shoulder and offered a resolution to "condemn the human smugglers, traffickers and international criminals" involved in the Andaman Crisis.

Without much hope left to both detain the refugees (already staying or incoming from unresolved conflicts somewhere else) and to offer determination or processing for asylum seekers and those with refugee status, Indonesia needed to improve its capacity to face the coming waves of boat people from the region's conflicts. For its Political Turn in early 2017, President Jokowi used the power endowed in him by the law to set a gambit called a Presidential Regulation (*Peraturan Presiden* or *Perpres*) signed on the eve of the last night of 2016 to finally "acknowledge" refugees' existence in Indonesia. This Presidential Regulation No. 125 of 2016 defines "refugees" along with the definitions used by the 1951 Refugee Convention. However, the real intention was to expand the capacity of the state apparatuses beyond Immigration and the use of standard detention centers. This Regulation mobilizes all Armed Forces and Police Force (even community members) to rescue (intercept) refugees wherever they are found and authorizes community-based detention centers whenever necessary. This Regulation seems to revoke the old and fossilized rule that "Indonesia will never acknowledge refugees legally" in the hope of

creating some illusions that the system "is evolving somewhere." An increased capacity to detain or house more refugees and asylum seekers with more personnel and "detention centers" in many kinds and forms did not automatically translate into the better capacity to restrict the freedom of movement of refugees and asylum seekers and to process or determine their refugee or asylum seeker claims.

Therefore, this paper will end by answering the very question stated at the beginning. Having passed through the different stages of different levels of commitment, involvement, and intention, Indonesia has proven to be unable to (1) restrict the freedom of movement of refugees and asylum seekers staying or waiting in the country and (2) provide satisfactory process and determination of refugee and asylum seeker claims for status (refugees and resettled asylum seekers). The illusion of the capability to restrict the movement of refugees through a functional immigration system and detention centers was produced only after some assistance from the Australian Government to refurbish or build the Immigration Detention Centers as well as any other forms of detention facilities in many Indonesian provinces. The total breakdown in the whole system of refugee and asylum seeker claim-processing happened when the Australian Government closed the resettlement door for all who passed through Indonesian territory after July 2014.

Endnotes

1 This paper is written under a Project Entitled "A Comparative Study of the State Policies and Practices Towards Asylum Seekers and Refugees in ASEAN: The Cases of Thailand, Indonesia, and Malaysia (Principal Investigator Dr. Sriprapha Petcharameesre of IHRP Mahidol University).

2 For Coughlan (1991, 84-85), Australia's refugee policy was more of a foreign policy tool than an implement of Government humanitarian concern. The overwhelming determinant of Australia's Indochinese refugee policy has not been domestic or humanitarian consideration but rather the political desire of the Australian Government and the Department of Foreign Affairs and Trade to improve Australia's relations with Asia, especially with the ASEAN members like Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand.

3 Suspiciously, to guard an island as small as 80 sq.km., Indonesia needed to mobilize a military operation codenamed *Halilintar* (Thunderbolt) using one destroyer, two frigates, one submarine, three tanker ships, three Nomad military planes, and some military units of the Air Forces. Around 20 ships were operating around the areas (Fandik 2013, 168-169).

4 Carruthers and Huynh-Beatie (2011) reported that from 145,000 to 250,000 refugees who passed Galang Island, around 132,000 had been resettled to third countries; the majority of around 6,000 to 8,000 long-term refugees who remained there until 1996 had been repatriated forcibly (part of the Comprehensive Plan of Action of June 1989). During the visit of Vietnamese President Le Duc Anh in April 1994 to persuade the refugees to come back "home," around 500 refugees protested against repatriation, and 79 refugees launched a hunger strike; one refugee burned himself to death and some hanged themselves (Hargyono 2015). The "screening" process under the CPA was notoriously corrupt, with officials asking for USD1,000 to 7,000 from asylum seekers waiting for their claims to refugee status (Hargyono 2015). The camp on the island today is part of a pilgrimage site—for some 100 to 200 tourists per weekend—of the "dark tourism" (coined by Stone and Sharpley 2008 to represent tourism to locations associated with death, suffering, violence or disaster) dreaded by the Vietnamese government (Carruthers and Huynh-Beatie 2011 citing Fadli 2009).

5 Indonesia has traditionally been a transit country for refugees and asylum-seekers, rather than a destination country. This claim was one important reason why it had not ratified the Conventions Related to the Status of Refugees. The commitments arising from ratification, in particular, covering the prohibition on refoulement or expulsion would overburden an archipelagic state with a large ocean territory and one which had many internally displaced persons as a result of disasters and conflict (Committee on the Elimination of Racial Discrimination 2007 on Summary Record of the 1832nd Meeting held at the Palais Wilson, Geneva, on Thursday 9 August 2007: Consideration of Reports, Comments and Information Submitted by State Parties under Article 9 of the Convention, UN Doc CERD/C/SR.1832 (14 August 2007) para 34).

6 The five main objectives of the CPA (United Nations 1989) were (1) reduction of clandestine departures through official measures against boat organizers and through mass information campaigns as well as opportunities for legal migration under the Australia-sponsored Orderly Departure Program, (2) provision of first asylum to all asylum seekers until their status had been established and a durable solution found, (3) determination of the refugee status of all asylum seekers in accordance with international standards and criteria, (4) resettlement of those who are found to be genuine refugees in third countries as well as all Vietnamese who were in first asylum camps prior to the regional cutoff date, and (5) repatriation of those found not to be refugees and re-integrating them in their home countries (Robinson 2004, 320).

7 The staggering size of 1,440 Indonesian boat crew serving in Australian jails between September 2008 and September 2013 (Indonesian Foreign Minister, Diplomasi Indonesia 2013: Fakta dan Angka, Jakarta 2103, 17) and 568 Indonesians reported by the Australian Federal Police (Missbach 2016) show the sophistication

and size of the smuggling network on the Indonesian side alone.

8 The Indonesian Government used many lower regulations rather than Acts/Laws to run this Law, such as Government Regulation (President-made) No. 31 of 1994 on Alien Control and Immigration Action, Ministerial Regulation (Minister-made) of Minister of Justice and Human Rights No. M.05.IL.02.01 of 2006, etc (Nethery et al. 2012, 94-95). The most significant change from this Law of 1992 to its successor (Immigration Law of 2011) is the use of the phrase "the authorities *may* detain …" (in Immigration Law of 1992) and the phrase "the authorities *shall* detain …" (in Immigration Law of 2011).

9 After restoring diplomatic ties with China in August 1990 and becoming the Chairman of the Non-Aligned Movement for 1992-95 period, as well as hosting the Asia-Pacific Economic Cooperation (APEC) Summit in November 1994, Indonesia agreed with Australia (Prime Minister Keating) to signing a "security agreement" quietly in December 1995 (Sukma 1997, 235). The agreement officially termed the Agreement on Maintaining Security (AMS) consists of three points. First, both sides agreed to consult regularly at a ministerial level on matters affecting their common security. Second, both agreed to consult in the case of adverse challenges to either party or to their common security interests and, if appropriate, consider measures that might be taken either individually or jointly and following the processes of each party. Third, the two countries would promote beneficial cooperative security activities (Sukma 1997, 235).

10 One of the first components of this MCIIP was the renovation and refurbishment of Indonesia's two largest Immigration Detention Houses (*Rumah Detensi Imigrasi* or *rudenim*) in Jakarta and Tanjung Pinang up to international standards (IOM Indonesia 2009, 88-89). Another part of MCIIP was the collaboration between Indonesian Immigration and IOM of 'Standard Operating Procedures' or SOPs Manual for all detention houses, detention rooms, and border checkpoints (IOM Indonesia 2009). These SOPs "use human rights instruments for their framework, provide guidance on the care of all detainees (on food, healthcare, communication, grievances and other aspects of life), and provide for the needs of special groups including individuals with disabilities and unaccompanied minors" (IOM Indonesia 2009).

11 With the refusal by Australia to resettle refugees processed in Indonesia and UNHCR after 1 July 2014, Indonesia was facing the grim prospect of refugees residing in its territory indefinitely. When the authorities found out about mass graves in Thailand near the Malaysian border known as reception points for Rohingya smuggled out of Myanmar, the crisis began in May 2015. The Rohingya were held, beaten, and murdered in camps in Thailand unless and until payments extorted from their families abroad were received (by smugglers) (McNevin and Missbach 2018, 295). Smugglers *en route* to the camps abandoned their Rohingya 'cargo' at sea. When some of the abandoned passengers steered their vessels towards the coasts of Indonesia, Malaysia, and Thailand, the authorities refused them permission to land. (The Bali Process stayed silent, and Australia refused to get involved.) Indonesian, Malaysian and Thai authorities provided these boats with fuel, water, and other provisions and returned them to the sea (Amnesty International 2015).

12 Ministry of Foreign Affairs, Malaysia, "Joint Statement: Ministerial Meeting on Irregular Movement of People in Southeast Asia," available at:<https://www.kln.gov.my/archive/content.php?t=3&articleId=5502813>.

13 This island-lending policy might have something to do with the Indonesian government's military intervention in East Timor in 1976. Indonesia had been seen by the International community as an abuser of human rights (Lee 2015, 43). On 10 May 1978, Vice President Walter Mondale met Gen. Soeharto in Jakarta and said that the Carter Administration "does not question the incorporation of East Timor into Indonesia … There are problems with how to deal with our mutual concern regarding East Timor and how to handle the public relations aspect of the problem" (US Department of State 1978, 36-37).

14 Later, in 1989, when more "economic refugees" appeared in Galang Island, two main actors began a new discursive practice of complaining about the "threats," demanding more "budget" for increasing "problems," or complaining of "lack of personnel"; these were the Indonesian Police and Directorate General of Immigration (Lee 2015, 49-55).

15 Taylor and Rafferty-Brown (2010b, 145-157) gave the five stages of refugee or asylum-seeker handling through the Immigration and UNHCR's system that are still relevant to this day. The *first* stage is "registration" that takes place whenever asylum-seekers want the Attestation Letter or Asylum Seeker Certificate (both in English and Indonesian) (with a photograph, necessary details like name, date of birth, statement that a holder is a person of concern by UNHCR). To get this Attestation Letter, the refugees complete a Refugee Status Determination form (RSD) with help from UNHCR's implementing partners (usually NGOs) that will submit this completed form to UNHCR. The *second* stage is "interview" (around six months) after the initial registration stage. In Indonesia, this interview is usually done by a UNHCR protection officer, via an interpreter if necessary (Taylor and Rafferty-Brown 2010b, 153). *Third*, after the "interview," the interviewing officer makes a "refugee status determination" based on the information procured through the interview and other information from all the sources available to UNHCR on conditions in the countries the asylum-seekers are applying. Asylum-seekers are assessed against the definition of refugee in Article 1A(2) of the Refugee Convention (Taylor and Rafferty-Brown 2010b, 154). If the asylum-seekers fit into the exclusion clauses in Article 1F of the Refugee Convention, their applications will be rejected. For the *fourth* stage or the "notification of the initial decision," generally in UNHCR's procedural standards manual, the decisions should be issued within a month of an applicant's interview (Taylor and Rafferty-Brown 2010b, 155). This decision must take the form of a letter written in English stating the reasons for the decision in very generic terms and, in the case of rejection, advising that they have 21 days to seek review of the decision (Taylor and Rafferty-Brown 2010b, 156). The availability of a "review" stage or the *fifth* stage is an essential safeguard against incorrect decisions; unfortunately, an independent review is something that the UNHCR is incapable of providing as it is not a state. Typically, the review of an initial unfavorable decision/rejection is conducted by another UNHCR officer (UNHCR, 'Procedural Standards for Refugee Determination under UNHCR's Mandate' [Procedural Standards, 1 September 2000) [2-17]-[2-18]).

References

Alford, Peter. 2010. "Indonesian Delay of Smugglers Defended." *The Australian*, December 16. http://www.theaustralian.com.au/news/nation/indonesian-delay-on-smugglers-defended/story-e6frg6nf-1225971768149.

Amnesty International. 2015. *Abandoned at Sea: The Refugee and Trafficking Crisis in Southeast Asia*. ASA 21/2574/2015. London: Amnesty International.

Australian Broadcasting Corporation. 2014. "Asylum Seekers on Board 'Burns' Boat Speak Out." *The ABC,* March 24. http://www.abc.net.au/7.30/content/2014/s3970527.htm. Accessed January 21, 2015.

Australian Broadcasting Corporation. 2015. "Four refugees transferred from Nauru to Cambodia." *The ABC,* June 4. http://www.abc.net.au/pm/content/2015/s4249044.htm. Accessed June 20, 2015.

Baskoro, Yudha. 2018. "Many asylum seekers and refugees from Afghanistan, Somalia, Sudan, Myanmar, Pakistan, Congo, Turkey, and Sri Lanka live in Jakarta's immigration detention center. *Jakarta Globe,* January 26. http://jakartaglobe.id/news/asylum-seekers-refugees-stranded-indonesias-immigration-detention-centers/.

Biok, E. 2009. "Australia and Refugees in the Asia Pacific." Ph D diss., University of Sydney.

Brown, Matt. 2011. "Indonesia Passes Laws Criminalizing People Smuggling." *ABC Online News*, April 7. http://www.abc.net.au/news/stories/2011/04/07/3185410.htm. Accessed September 14, 2009.

Buzan, Barry. Ole Waever, and Jaap de Wilde. 1998. *Security: a new framework for analysis*. Boulder: Lynne Rienner.

Carruthers, Ashely and Boitran Huynh-Beatie. 2011. "Dark Tourism, Diasporic Memory and Disappeared History: The Contested Meaning of the Former Indochinese Refugee Camp at Pulau Galang." In *The Chinese-Vietnamese Diaspora: Revisiting the Boatpeople*, edited by Yuk Wah Chan, 147-160. London and New York: Routledge.

Coalitions. 2013. "The Coalition's Operation of Sovereign Borders Policy July 2013." The nationals,http://www.nationals.org.au/Portals/0/2013/policy/The%20Coalition%E2%80%99s%20Operation%20Sovereign%20Borders%20Policy.pdf. Accessed March 10, 2019.

Commonwealth Law. 2015. *Migration Act 1958. (C2015C00238)*. COMLAW, http://www.comlaw.gov.au/Details/C2015C00238). Accessed March 22, 2019.

Coughland, James E. 1991. "International Factors Influencing Australian Government's Responses to the Indochinese Refugee Problem." *Vietnam Generation* 3(2) : 83-97.

Crock, Mary, Ben Saul, and Azadeh Dastyari. 2006. *Future Seekers II: Refugees and Irregular Migration in Australia*. Sydney: The Federation Press.

Fadli. 2009. 'Closure of former refugee camp stirs protest.' *Jakarta Post*. 30 July.

Fandik, Mohammad. 2013. "Penampungan Orang Vietnam di Pulau Galang 1975-1979." *Avatara* 1(1): 164-172.

Goel, Deepti. 2010. "Perceptions of Immigrants in Australia after 9/11." *Economic Record* 86(275); 596-608. doi: 10.1111/j.1475-4932.2010.00651.x

Hargyono, Sindhunata. 2015. "Ugly Sanctuary." Inside Indonesia, https:/www.insideindonesia.org/ugly-sanctuary-2. Accessed March 22, 2019.

IOM Indonesia. 2010. *Fact Sheet/Irregular Migration/2010/1*. International Organization for Migration, http://www.iom.or.id/project/eng/fs/Irregular%20Migration%20Fact%20Sheet_2010_eng%281o%29.pdf.

IOM Indonesia. 2009. *Annual Report 2008*. International Organization for Migration: Jakarta, Indonesia.

IOM Indonesia. 2014. "Alternatives to Detention." International Organization for Migration, http:www.iom.int/files/live/sites/iom/fiels/Country/docs/IOM-Indonesia_Alternatives-to-detention-September-2014.pdf.

Karyotis, Georgios. 2012. "Securitization of Migration in Greece: Process, Motive, and Implications." *International Political Sociology* 6 (4): 390-408.

Kemlu (Kementerian Luar Negeri). 2006. *Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation*. International Treaty Search, http://treaty.kemlu.go.id/uploads-pub/1637_AUS-2006-0164.pdf.

Kemlu (Kementerian Luar Negeri). 2015. *Daftar perjanjian internasional (tersimpan di Kementerian Luar Negeri Republik Indonesia)*. International Treaty Search, http://treaty.kemlu.go.id/index. php/treaty?index?fullPage=1&Treaty%5Bcountry_id%5D=15&Treaty% 5Bsigned_ year%5D=2002.

Kneebone, Susan. 2017. "Australia as a Powerbroker on Refugee Protection in Southeast Asia: The Relationship with Indonesia." *Refuge* 33(1): 29-41.

Koser, Khalid. 2010. *Responding to Boat Arrivals in Australia: Time for a Reality Check*. Sydney: Lowy Institute. http://www.lowyinstitute.org/publications/responding-boat-arrivals-australia-time-reality-check.

Lawyers Committee for Human Rights. 2002. *Review of States' Procedures and Practices relating to Detention of Asylum Seekers*. Reguge Council USA, http://www.rcusa.org/uploads/pdfs/ Full_country review.pdf.

Lee, Antony, 2015. *Securitization of Transit Forced Migrant.* MA Thesis., Lund University.

MacIntosh, Constance. 2012. "Insecure Refugees: The Narrowing of Asylum-Seeker Rights to Freedom of Movement and Claims Determination Post 9/11 in Canada." *Review of Constitutional Studies/Revue d'études constitutionelles* 16(2): 181-209.

McDonald, Matt. 2011. "Deliberation and resecuritization: Australia, Asylum Seekers normative limits of the Copenhagen school." *Australian Journal of Political Science* 46(2): 281-289.

McMaster, Don. 2002. *Asylum seekers: Australia's response to refugees*. Melbourne: Melbourne University Press.

McNevin, Anne, and Antje Missbach. 2018. "Hospitality as a Horizon of Aspiration (or, What the International Refugee Regime Can Learn from Acehnese Fishermen)." *Journal of Refugee Studies* 31(3): 292-313.

Ministry of Foreign Affairs Malaysia. "Joint Statement: Ministerial Meeting on Irregular Movement of People in Southeast Asia." https://www.kln.gov.my/archive/content.php?t=3&articleId=5502813.

Missbach, Antje. 2015. *Troubled Transit: Asylum Seekers Stuck in Indonesia*. Singapore: ISEAS Yusof Ishak Institute.

Missbach, Antje. 2016. "Perilous Waters: People Smuggling, Fishermen, and Hyper-precarious Livelihoods on Rote Island, Eastern Indonesia." *Public Affairs* 89(4): 749-770.

Missbach, Antje. 2017. Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in "Alternatives to Detention." *Refuge* 33(2): 32-44.

Morrison, Scott. 2014. "Minister Morrison message to transferees on Nauru/Manus processing centres" English: ABF TV.

Nethery, Amy and Carly Gordyn. 2014. Australia-Indonesia cooperation on asylum-seekers: a case of 'incentivised policy transfer.' *Australian Journal of International Affairs* 68(2): 177-193.

Nethery, Amy, Brynna Rafferty-Brown and Savitri Taylor. 2012. Exporting Detention: Australia-funded Immigration Detention in Indonesia, *Journal of Refugee Studies* 26(1): 88-109.

Paulsen, Julia. 2016. "Australia's Refugee Policies and Bilateral Relations with Indonesia." MA Thesis, Norwegian University of Life Sciences. Faculty of

Social Sciences.

Petcharameesre, Sriprapha, Wong Hughes, Travers McLeod, and Tri Nuke Pudjiastuti. 2016. "The Andaman Sea Refugee Crisis a Year on: Is the Region Better Prepared? *Conversation*, May 27, https://theconversation.com/the-andaman-sea-refugee-crisis-a-year-on-is-the-region-now-better-prepared-6477148.

Phillips, Janet and Harriet Spinks. 2013. Boat arrivals in Australia since 1976 (D.o.P Services, Trans.) *Research Paper*. 2013-2014 (28). Canberra: Parliamentary Library.

Pitonak, Amy. 2018. "Pressure to Return? Afghan Refugees Protest at Indonesian Detention Centre." *Afghanistan Analysts Network*, April 3. https://reliefweb.int/report/indonesia/pressure-return-afghan-refugees-protest-indonesia-detention-centre/.

Richardson, Roslyn. 2010. "Sending a Message? Refugees and Australia's Deterrence Campaign." *Media International Australia* 135: 7-18. http://search.ebscohost.com/login.aspx?direct=true&db=ufh&AN=59576427&site=ehost-live&scope=site.

Robinson, W. Courtland. 2004. Comprehensive Plan of Action for Indochinese Refugees, 1989-1997: Sharing the Burden and Passing the Buck. *Journal of Refugee Studies* 17(3): 319-333.

Rudd, Kevin. 2009. *People smugglers should rot in hell: Rudd.* Australian Broadcasting Corporation (ABC Radio Channel), April 17.

Griffiths, Emma. 2009 *People Smugglers should Rot in Hell: RUDD*. Guest Speaker Kevin Rudd. Australian Broadcasting Corporation (ABC Radio Channel), April 17.

Stenger, Lars. 2011. Pencari Suaka dan Pengungsi Lintas Batas di Indonesia. (Asylum Seekers and Foreign Refugees in Indonesia). Focus Group Discussion. UNHCR, HRWG, LBH, YLBHI: Jakarta.

Stone, Philip and Richard Sharpley. 2008. "Consuming dark tourism: a thanatological perspective." *Annals of Tourism Research* 35(2): 574-595.

Sukma, Rizal. 1997. "Indonesia's *Bebas-Aktif* Foreign Policy and the 'Security Agreement' with Australia."*Australia Journal of International Affairs* 51(2): 231-241.

Svabo, Terje. 2002. *Tampa*. Lysaker: Dinamo Forlag.

Taylor, Savitri and Brynna Rafferty-Brown. 2010a. "Waiting for Life to Begin: the Plight of Asylum Seekers Caught by Australia's Indonesian Solution." *International Journal of Refugee Law* 22(4): 558-592. doi:http://dx.doi.org/10.1093/ijrl/eeq034.

Taylor, Savitri and Brynna Rafferty-Brown. 2010b. "Difficult Journeys: Accessing Refugee Protection in Indonesia." *Monash University Law Review* 36(3): 138-161.

Thom, Graham. 2016. "The May 2015 boat crisis: the Rohingya in Aceh." *Cosmopolitan Civil Societies Journal* 8(2): 43-62.

UNHCR. 2000. *The State of the World's Refugees: Fifty Years of Humanitarian Action*. New York: Oxford University Press.

UNHCR. 2007. *UNHCR Note on the Principle of Non-Refoulement.* UNHCR,http://www.refworld.org/docid/438c6d972.html. Accessed December 4, 2015.

UNHCR. 2015. *UNHCR-Komnas HAM MoU Signing*. UNHCR, http://www.unhcr.or.id/en/unhcr.org/3b73b0d63.html. Accessed September 9, 2015.

UNHCR. 2015b. *Mixed Maritime Movements in South-East Asia*. Bangkok: UNHCR Regional Office for South-East Asia.

United Nations. 1989. *Draft Declaration and Comprehensive Plan of Action approved by the Preparatory Meeting for the International Conference of Indo-Chinese Refugees on 8 March 1989*. A/CONF.148/2. Geneva : UN.

Watson, Scott D. 2009. *The Securitization of Human Migration: Digging moats and sinking boats*. Oxon: Routledge.