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Open Skies Policy: The Developing Countries Point of View

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The Echoes of International Human Rights Law: In Perspective of Law Enforcement Dimension to Deal with Irregular Immigrants in Indonesia

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International human rights laws in the forms of United Nations Statues, International Conventions, Universal Declaration on Human Rights and other international law instruments have highlighted a guarantee of humanitarian protection which echoing human rights components without exception inborn to human being in particular refugees as the subject of international law. In managing minimum standard of rights and duties of a refugee and the judicial status of refugee under the protection of UNHCR and IOM humanitarian efforts within Indonesian territorial jurisdiction it is required tha all of refugees and asylum seeker abide to national regulation and legislation formats while they are residing temporarily in Indonesia. Until currently, the policies of Indonesian Government in dealing with and handling or doing management efforts for the arrival of refugees and asylum seekers in Indonesia, have not emerged yet. Considering the challenge on how to deal with asylum seekers and refugees be categorized as irregular immigrants, this issue needs mitigation effort by formulating the Directorate General of Immigration's policy to be more focus and comprehensive to cope with adverse negative impacts of the existence of illegal immigrants undergoing to the matters of ideology, politics, economy, social cultural extend, national security and immigration compliance.

Keywords: International Human Rights Law, refugees, asylum seekers, irregular immigrants

I. Introduction

This academic journal means to discuss and assess human rights conceptualization in international relation contexts and how the countries world-wide to do balancing conditions their immigration law enforcement and dealing with the existence of irregular immigrants in their countries. Immigration law enforcement is as the extend of causality effects to lookout immigration law at the country be implemented at national level across its territorial jurisdiction

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which be possible to compliance in the matters of issuing permission of person to do migration (entry, reside and exit) within the boundary of its own border. The human rights conceptualization is as guideline to respect anyone without exception. This pattern is as interaction between countries which allow legal ruling regulatory formalities to their national to have migration and travel to any other countries.

The existence of refugees, asylum seekers and stateless persons as condition may lead to the emergence of terminology under the term of irregular immigrants which the status of these subjects of international law may not specifically stated the legally status of their existence to stay legal in one country. And the status of regular immigrants and irregular immigrants have been protected in international human rights law to determine appropriate treatment for the existence condition of those three subjects of international law in that country and to the country where these three subjects may do not have any connection in term of nationality law or citizenship law with the nationality where they currently be present.

Immigration activities as phenomenon in society, this has been developed along with human civilization across the globe. In Indonesia, this immigration activity has been done since Netherlands ruling by which the authority to manage the migration of people within this are is under Immigratie Dienst[2] and this authority had to deal with immigration matters across the territory. After the independence, this immigration authority is still running its roles as consequences of managing the territorial jurisdiction of the country.

The running of immigration functions is important to safeguard the integral sovereignty of the country, by considering that Indonesia as an archipelago country consisting of 17.508 islands. Indonesian archipelago lays between six degree north longitude until eleven degree of south longitude, and nine degree until 141 degree east magnitude and it lays between two continents of Asia and Australia/Oceania. This strategic position may lead to the characteristic impact of culture, social, political, and economical matters. Indonesia territory also lies across 3.977 mills between Hindia Ocean and Pacific Ocean. And if all archi-

[2] Immigratie Dienst or Immigration Service is an institution when was in Netherlands Era which its tasks are in managing immigration matters and in issuing immigra tion regulations emphasizing to Netherlands' interests. See, Abdullah Sjahriful, Memperkenalkan Hukum Keimigrasian, Ghalia Indonesia, Jakarta, 1993, p 30.

pelago islands be gathered, so the length of this country would be 1.9 million mills.[3]

Based on universal principals of immigration provision at any countries, every country has authority to allow the extent of permission and prohibition of persons to enter and leave out of the country.[4] And this universal recognition should be referred to the rights of person or migrants and to return. The most important reference is in the 1948 Universal Declaration of Human Rights article 13 (2), which states "everyone has the right to leave any country, including his own, and to return to this country." The UN Protocols against Migrant Smuggling and Human Trafficking enjoin States to facilitate and accept, without undue or unreasonable delay, the return of their nationals or permanent residents.

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[3] http://www.indonesia.go.id/home, accessed on 18 June 2005.

[4] In penal law, territorial juricdition principal affirms at article 8 in Kitab Undang-undang Hukum Pidana ("KUHP"), and in business law, generally this principal is known as National Treatment principal where the country be wished to treat every foreigner inside the country with the same treatment be done to its own nationals. See the World Trade Organization at Law No. 7 in 1994 concerning to the endorsement of world trade organization approval, also see Yudha Bhakti, Hukum Internasional: Bunga Rampai, Alumni, Bandung, 2003, p 17-19.

[5]Based on United Nations data that Human Rights International instruments: Charts of Ratification as of December 31st 1996, United Nations, New York and Geneva, 1997, ST/HR/4/ Rev.15. Those 24 international conventions are as follows: (1) International Covenant on Economic, Social and Cultural Rights (ICESCR); (2) International Covenant on Civil and Political Rights (ICCPR); (3) Optional Protocol to the International Covenant on Civil and Political Rights; (4) Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty; (5) International Covenant on the Elimination of All Forms of Racial Discrimination; (6) International Covenant against Apartheid in Sports; (7) International Convention on the Suppression and Punishment of the Crime of Apartheid; (8) Convention on the Prevention and Punishment of the Crime of Genocide; (9) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crime Against Humanity; (10) Convention on the Rights of the Child; (11) Convention on the Nationality of Married Women; (12) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; (13) Convention on the Elimination of All Forms of Discrimination against Women; (14) Convention on the Political Rights of Women; (15)Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (16) Slavery Convention of 1926; (17) 1953 Protocol Amending the 1926 Convention; (18) Slavery Convention of 1926 as amended; (19) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; (20) Convention on the Reduction of Stateless Men; (21) Convention relating to the Status of Stateless Person; (22) Convention relating to the Status of Refugees; (23) Protocol relating to the Status of Refugees; and (24) Convention on the Rights of Migrant Workers and the members of their families.

II. International Human Rights Law

International convention concerning to human rights and UN Statute concerning to this matter, have provide legal umbrella to recognizes human rights standard be acknowledged worldwide. There are 24 international law products of conventions[5] in relating to human rights and most of these conventions had been signed, ratified by countries across the globe. And all of these 24 conventions concerning to human rights are always complying to UN Statue as international foundation to consider the formulation of these international conventions to the national level of the participant countries.

As a foundation to human rights recognition internationally, and as guided on UN Statue, human rights as basic dignity and human values of individual person regardless gender and nation state and country wealthiest without exception. In specific the UN Statue concerning to human rights takes care and respects to human rights values of person by pointing historic aspects of the 1st and 2nd World Wars which caused victims and suffering to all mankind.[6] And this human rights are implemented without discriminating to race, gender, language and religion.[7]

This human rights without exception is inborn to any individual and may allow the protection of human rights also be echoed to the status of refugees and asylum seekers and this elements of human rights principals in complete portray at Universal Declaration of Human Rights in 1948. At this 1948 Universal Declaration of Human Rights, it consists of 30 articles which sound rights and independence be held by people without exception. In implementing human rights for refugee in Indonesia, in particular the placing of them are sometimes overcapacity at Immigration Detention Center, so thus Imigrasi composes discretion policy to allow the placing of females, families and children outside the detention center, and for males inside the detention center, under the protection of UNHCR in regarding to the refugee status determination and by the assistance of International Organization for Migration (IOM) for the cure for the refugees and asylum seekers.

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[6] Preamble of United Nations Statue as foundation to the establishment of United Nations Organization in 1945, paragraph 4.

[7] Article 55, United Nations Statue in 1945, point C.

The 1948 International Declaration as guideline for human rights document and constitutional formats implemented at national level composed by most countries worldwide.[8] The magnetic interaction in this "declaration" is as parameter to interpret the human rights meaning at national practices. This brings a fresh wind to human rights values across the globe. Comparing to the human rights instruments of International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR), as both are legally binding to their participants, and most countries are keen to implement the 1948 Universal Declaration instead of this two international covenants by considering the state roles as an executor to decide humanitarian values from human rights be essential for their national policies, and this may be dissimilarity with the two instruments of ICESCR and ICCPR, which they are requiring the completion of duties to have benefit in carrying on the rights of the implementation of both international instruments.

Looking over and considering the implementation of human rights are depending on the central issue, sensitivity and problems faced by country so thus all countries be possible to ratify or doing consent from both instruments of ICCPR and ICESCR at national level of participating countries. It may relate to the obligatory point in article 1 from both instruments ICCPR and ICESCR be believed weight down the country, in particular the developing country, in which this article specifically provide a place to nation group or community from the participants countries to do self determination in politic, rights, economical matters and cultures.

In provision of international law contract agreements[9], a participant country has to do in relating to the said rights and duties portraying at an international agreement requiring ratification and non ratification at national level of state implementation to this international agreement. And for the international agreement requiring the output of ratification at a participating country, based on international customary practice, the participating country be given an access to

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[8]In Republic of Indonesia Confederation in 1949 and Momentarily Law (Undang-undang Sementara (UUDS)) 1950-1959 as constitutions which were completely arranged and managed concerning human rights in Indonesia.

[9]Mochtar Kusumaatmadja, Buku I – Bagian Umum, 1st ed, Bandung: Binacipta, 1976, 110. Referring to the result of inventory made by Mochtar Kusumaatmadja recorded that the names of international agreements have delivered certain kinds of rights and obligations for the countries which participating in as the names of the Party, as such: Treaty, Pact, Convention, Charter, Statue, Declaration, Protocol, Arrangement, Accord, Modus Vivandi, Covenant.

come to international reservation institution to seek assistance to extend its consent to have prerequisite condition temporarily to assess and solve sensitive issues at its national level to the implementation of this international agreement in practice.

The focus of this journal discussion is assessing international protection for refugees by not doing refoulement or repatriation to them to the country where their safeties are in danger.[10] The 1951 International Convention in Geneva determines the term of refugee status, rights, and duties be conducted by the participating country and by the refugees. The obligation conducted by refugees resettling at the participating country or temporarily staying at transiting country, requires to comply with national regulation in that country. In 1951 convention, at certain articles requires to do ratification or may be reserved, point outs minimum standard concerning to the treatment of refugees, including the fundamental rights and essential duties be abided to refugees in the territory of participating country. Moreover, these certain rights and duties are similar between refugees and foreigners residing in the territory of participating country.[11] And this 1951 Convention is also requiring the similar rights and duties between its nationals and the refugees in its country.[12]

To the extent of 1951 Convention, consisting of 46 articles and 7 chapters, and it is a multilateral agreement revealing international human rights law impor-

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[10]In human rights law instruments consist of Non-refoulement to those whose petition or declaration/affirmation as the first extent as enduring persecution in their home country and fear of their safeties, that country will not deport them at the first place (1951 Geneva Convention concerning to the status of refugees, article 33).

[11]Referring to the 1951 Geneva Convention that the rights and obligations of refugees as been stated at the articles in this convention, in particular stipulated on: (1) the stay period of refugee may require the same condition of foreigners that also have limitation, unless any of requirement may be fulfilled by the refugees (article 6); (2) equality treatment (article 7); (3) personal status to do marriage (article 12); (4) the rights to do leasing moving and unmoving items (article 13); (5) rights to have role in non-political association and manpower federation (article 15); (6) the working earns salary (article 17); (7) rights to do entrepreneur (article 18); (8) independent professional (article 19); (9) the rights to migrate (article 26); (10) identity letter (article 27); and (11) travel document.

[12]Ibid. Provision to strengthen and implement rights and obligations equally between refugees and the country's nationals stated on the 1951 Geneva Convention as stipulated on articles, as follows: (1) independent to exercise their religion and education to their children (article 4); (2) intellectual property rights be delivered to the country where the inventor residing (article 14); (3) access to the court (article 16); (4) rights to have general product distribution (article 20); (5) manpower and social net guarantee (article 24); and (6) fiscal payment (article 29).

tant principals. Besides defining the term of refugee in general terminology (article 1), the 1951 Geneva Convention highlights non-refoulement principal (article 33) which is a core key are in the establishment of this convention, and even for non-participating country, as a humanitarian effort we should not repatriate the refugees to their country where the consent of their safeties is in risk. Minimum standard arrangement of rights and duties of refugees is as a parameter to manage juridical status of refugee, and their rights to seek manpower matter and welfare after they are approved by the convention in regarding to the status of their refugee determination process. Furthermore, in upholding administrative standard in the participating country, the residence card, travel document and naturalization procedure guideline be made known to refugees, in that country. The point as a directive in this convention and as affirmed at UNHCR Statute that the participating countries do cooperation with UNHCR in functioning the roles of and supervising the implementation of this convention.

The advocate of this 1951 Geneva Convention is the New York Protocol in 1967 concerning to the status of refugees. In this protocol, it is merely discussed and extended the determination context of refugee terminology. The extend of refugee definition in this protocol by considering to the refugee term depicted occurrences in the period before January 1st 1951, and due to the reason of the period between 1951 and 1967 required protection to the refugees, thus this protocol is as a spreading wings of protection of mankind within the period.

The 1967 New York Protocol is an independent international instrument, which the participants are not only the ones who are the participating countries of the 1951 Geneva Convention. The legacy of 1951 Convention and 1967 Protocol have guided most countries to recognize the status of refugee arriving in the territorial country, by supporting protection to the refugees without duly mindful that the duties of refugees are have to be conducted by residing refugees in their territory.

The context of implementing arrangements from this convention and protocol are a safeguard of UNHCR Statute to protect refugees globally and overseeing the implementation of the convention. For the purpose of the protection, instead of a global context of international agreement, it would be possible to manage regional context in protecting refugees and human rights in the region which the rights and duties are collectively and regionally agreed to be implemented at the basis of solidarity of countries which geographically located nearby,

as per se in Europe, America and Africa.[13] The European Convention on Human Rights had been signed in Rome (November 4th 1950) or Convention for the protection of Human Rights and Fundamental Freedoms (1950), put into pratice rights and duties of people without exception to the refugees by considering the promotion of human rights in European continent.

American continent has established American Convention on Human Rights (signed on 22nd November 1969), the format of this international agreement be agreed by all countries in this continent regionally and has been started since 18th July 1978 and has been ratified by 25 countries as members of Organization of American States (OAS). This convention be implemented specifically to refugees and gives respect to the achievement of refugees rights as a legal person, who has right to live, rights to be treated humanize, right to have compensation, right to build family, rights to have a name, children rights, nationality rights and rights to have equal protection in national context of participating countries where the refugees are living.

Beside the rights of refugees being regulated in this regional instrument, this convention has been discussed in regard to the possibility of the limitation on migration or movement of refugees for the extend matters of criminal prevention, security protection and national interest, general safeties or other related rights. And for the asylum seekers by viewing this convention, it is regulated the term of non-refoulement, to the country where they would be in risk in the extend matters of race issues, nationality, religion, social status and political opinions.

African region has implemented regional conversation on Convention governing the Specific Aspects of Refugee Problems in Africa (1969) and the African Charter on Human and People's Rights (1981) as the recognition and protection of the human rights of refugees. The definition of refugees in this convention seems similar with the definition in the 1951 Geneva Convention with the additional clause in article 1 (4) of this African convention that relates to characteristic of Africa where it may cause the refugees living their countries due to invasion, causalities, aggression, and any serious concerns which put the social community in risk and high danger.[14]

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[13]D.J. Harris, Cases and Materials on International Law, London: Sweet & Maxwell, 1998, 624-625.

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Nevertheless, the implementation of human rights protection for asylum seekers is defined at article 2 of this Organization of African Unity (OAU) convention by doing acceptance of to do their asylum for those who do not want to go back to their country of origin where their safeties in high risk. And this asylum protection is humanitarian effort for peace process. To the vein of repatriation, be determined if there is a need from refugees and there is guarantee of protection in their origin country.

III. Policies of Immigration Law in Indonesia

The Law No. 9 in 1992 concerning to Immigration as a core foundation in managing immigration matters in Indonesia which it is essentially portraying sovereignty elements in the aspects of managing the traffic of people between countries, and staying of persons in the country and the compliance of foreigners in Indonesia. For managing all foreigners do migration within the country of Indonesia, government has policies to implement the principal of "selective policy" as such a primarily key point to allow people movement within country in the selective manners. In this principal point, the consent to the existence of foreigners in the country or the ones be possible to have enter and live in the country seems to relate to the benefit and valuable extends for national welfare and interest in Indonesia and also do not cause any risky matters to security and social harmony of the Republic of Indonesia based on Pancasila and UUD 1945.

Immigration permissions include as such time limit to stay and the purpose of staying in the country. The period limitation requires for an essence of compliance and meeting the obligation to uphold the regulation of the country and the purpose of staying has to be cleared to know the intention of travelers may not be harmful to the public interest in Indonesia. To that extend, the immigration penal actions has to be guided by the principle of *Ultimum Remedium* which means the law and regulations can be advocated and sustained if the preventive institutions may fail to solve the matters. Nonetheless, the limitation of meeting the standard of penal essences in immigration law has to be outlook proportionally, where the actions have been regulated in KUHP and related to immigration, so thus that matter becomes essential to be said as the immigration penal actions. In regarding to the immigration matter, it is merely the extent of administrative law and legal punishment to this action will lead to be penalized as administrative action.

The political essence of Immigration law is as core consideration to the policies of immigration. Historically, at the period of Netherlands, we had a policy of *'open door policy'* by referring to the environ conditions during the time, and it lead to the selective policy since the independence of the country. The implementation to appoint immigration policy is by sustaining prosperity approach to security approach to the good of national interests of the country.

Tasks and functions of immigration matters incorporate to do compliance of upholding law enforcement as scheme of national legal enforcement. The development and immigration legal history which always put legal enforcement functions as an interrelated part to immigration task and function. It is because, in immigration function, it is including the essence of controlling as the collective process of activities to monitor, regulate and inspect whether the process of carrying out tasks have been in accordance to regulate rules. At the beginning the controlling only be conducted to foreigner; however, in the running and viewing to social dynamic complexity this matter should be conducted holistically, it include the controlling to Indonesian national in particular the ones who violated and counterfeited the travel documents.

In this globalize era, it has been driven every country to be more open and without exemption to Indonesia. As a strategic located country in international relations, in particular to the extent of geographical aspects and human resources and its national resources, it may lead to enlarge the numbers of persons to do travel within this country's borders. In this vein, this condition has put immigration tasks and functions in more fashioned complex.

It is because the policy of doing migration, in particular to foreigners to Indonesia in the running tends to be more straightforwardly simple as such for the tourism purpose and for business so to social cultural visit which it lead to run the policy in facilitating nationals from 63 countries to be able to apply the visa on arrival mechanisms. This policy is also be serviced to the investors in doing investment business in Indonesia as such at the special economic zone. These distinguished immigration facilities is as an endeavor to sustain the service to the sake of national interest.

Immigration role and function has been developed in accordance with social livelihood. However, this moderate forbearance facility has not yet been significantly sustained to the efforts in managing law enforcement measures to all of violation and breaching actions against related regulations immigration

matters. This condition is as a new challenge in immigration selective policy because the aspects of law enforcement still have to be conducted in accordance with the intrinsic values in government regulation and to the sustaining facility provision to immigration service delivery.

Immigration law procedure is a subsystem at national law system. It is as a part of administrative state law, immigration law[15] be built based on core substance in translating immigration function as the run of state administration (*bestuur*) and the scope of immigration has been developed not only to manage entry and exit regulation within the country's borders, it is also including the essence of controlling to foreigners in the country, as well as interrelated to the entry and exit prohibition measures of persons at the borders, and at all it is for the sake of general interests, investigation to deal with immigration penal action, and the arrangement of immigration procedure and the mechanism of immigration permit issuance.[16]

In the perspective of those immigration related functions, immigration law not only moves forward in the scope of administrative state law, but also links up to other related law, as such economic law, international law and penal law.

IV. Immigration Law Enforcement Policy in Indonesia

The significant thing since the legal establishment of immigration regulation law is in relation to the implementation of penal law in immigration. Punishment over breaching the law action in criminal dimension is merely part of immigration law enforcement. Immigration law has to be strengthened in regard to penal sentence, according to Barda Nawawi Arief[17], the things relate to administrative penal action; it is a penal law in which regulating offences in administrative law.

Therefore, administrative penal offence as such administrative crime means as "an offence consisting of a violation of an administrative rule or regulation and carrying with it a criminal sanction." Besides, because administrative law in

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[15] Bagir Manan, "Hukum Keimigrasian dalam Sistem Hukum Nasional," Jakarta, 14 January 2000, p. 7.

[16] M. Iman Santoso, Perspektif Imigrasi dalam Pembangunan Ekonomi dan Ketahanan Nasional, Jakarta: UI Press, 2004, 40.

[17] Barda Nawawi Arief, Kapita Selekta Hukum Pidana, Bandung: PT. Citra Aditya Bakti, 2003, 14.

principal such as "regulatory rules" which be formulated in performing "regulatory powers"; hence, administrative penal law usually be said as "penal law (concerning) to regulation" or "penal law of rules" (*Ordenungstrafrecht/ Ordeningstrafrecht*).

Over-viewing law enforcement function before the ruling of law No. 9 in 1992 concerning to Immigration, has been directed the role of immigration investigation in the judicial legal process of immigration penal action as been regulated by Emergency Law No. 8 in 1955 concerning to Immigration penal action. In the 1992 Immigration law, it rules in particular the roles and legal position of Civil Servant Investigation Officers (Penyidik Pegawai Negeri Sipil (PPNS Imigrasi)) in Immigration as immigration lwa enforcement apparatus.[18]

In the running after the legalization of Law No. 8 in 1981 concerning to the book of Penal/Criminal Court Law (Kitab Undang-undang Hukum Acara Pidana (KUHAP)) and Law No. 9 in 1992 concerning to Immigration, the status of PPNS Imigrasi is not regulated by the Law No. 8 in 1955 concerning to Immigration penal action. The implementation of immigration penal action is at area of legal jurisdiction between Police Investigator and PPNS Imigrasi. Therefore, based on KUHAP and Law No. 9 1992, the role and function of PPNS Imigrasi are in accordance with the provisions in KUHAP in finalizing to immigrant penal indictment.

Based on above mentioned discussion, it seems there is an interconnected process between immigration law enforcement system and penal law; it is because they lay at national law system in particular judicial legal court process. As part of national law system, the existence of immigration law certainly is not unbound from substances elements, structures and legal culture;[19] hence, the achievement of immigration law be impacted by these three components.

At operational function of immigration law enforcement also disguised the rejected of entry permit, departure permit, and immigration permit, including to the extent of the decision to finalize immigration action as such placing at detention or deportation. All those are as the form of immigration enforcement in administrative nature. Meanwhile, in the vein of enforcement law *pro bono* in pro-judicial legal process as such the authority to conduct investigation, including inspection (call-on, apprehended/arrest), examination, seizure), penal indictment case, indictment proposition of case to the legal prosecutor.

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[18]Article 1 Undang-undang Darurat No. 8 in 1955 concerning to Immigration Penal Action.

[19]W. Friedmann, American Law an Introduction, New York: W.W. Norton & Company, 1998, 18-20.

In the circumstances of immigration law, it is as part of administrative law; hence, immigration law enforcement as administrative penal law, and this has significantly close relations to the provisions in Penal Law Book (KUHP) and Penal Law of Legal Court (KUHAP). In the Immigration Law No. 9 in 1992 has been regulated the essence of felonies/offences and misdemeanors. Legal violations are considered felonies are specified in articles 48, 49, 50, 52, 53, 54, 55, 56, 57, 58 and 59. And the legal violations are considered misdemeanors as specified in articles 51, 60 and 61. Moreover, the legal proportions in both types of those legal violations are sentenced imprisonment, detention sentence and fine sanction. And only two immigration legal violations as specified in article 58 and 59 are only liable to prison sentence.

Looking over the arrangement of people movement and traffic within the country is based on immigration law and related regulations which currently have met requiring standard as sub-system in penal law system, it is because it has inherent to the legal proportion in the conception of penal law. Nevertheless, in term of law enforcement measures are still facing challenges and weaknesses.

Regulation in regard to sanction and legal provision are part of sub-system in penal law, and still facing challenges in implementing this regulation in practical extents. In immigration law enforcement usually it may obscure in whether administrative law enforcement process be implemented in practice (administrative decision) or penal law (pro-legal judicial process). This obscure may show the way that the purpose of immigration law enforcement may be unsuccessful to achieve the target of at optimum effect it will minimize immigration law violation.

The problem in enforcing immigration law still lays in the circumstances where the balance between penal law enforcement and administrative decision, so this expects leading to the impact in minimizing immigration law violation. Yet, it has still done in optimum ways and effects. This can be portrayed that the immigration law violation may be still high from time to time. The high figure of immigration legal violation can be seen from the annual report from Directorate General of Immigration, in particular the Directorate General of Investigation and Immigration Measures (previously named as Directorate Control and Immigration Action), as follows:[29]

[29]Directorate General of Immigration, Ministry of Law and Human Rights, Annual Report 2001-2006.

a. In year 2001 there was 1.502 cases of immigration legal violation had been processed by Directorate General of Immigration and all immigration units across the country. From these total cases, only 16 cases be sentenced pro-judicial legal process and the cases went to the court. In other words, less than 1% from total number of immigration legal violation be done the investigation, verification, prosecution and went to legal court.
b. In year 2002, total number of immigration legal violation in Indonesia was increasing +- 56% comparing to previous year, which this 2002, the total cases are 2.282 across the country. The handling of this legal violation were undergoing pro-judicial legal process only for ten cases, or only 0,42% from the total of immigration legal violation occurred in this year around.

Immigration legal violations in 2003 were increased at 2.295 cases and in 2004 the legal violations were stayed in the number of 2.332 cases; in other words, these two years still stated that immigration law violation in high percentage. The decreasing number was happened in 2005, as such 1920 cases and the ones be processed to pro-judicial legal process only ten cases. In 2006, 1889 cases occurred and only five cases went to pro-judicial legal process to the court.

Based on the total cases occurred and reported annually, it is to be believed that the total number of immigration legal violation are quite high in number annually, and the number of those legal violation in immigration were only in less number be solved at penal court process if it was compared to the practice of administrative legal exercise in the term of immigration action as deportation. Types of immigration legal violation includes conducting activities not in accordance with the purpose of said document of stay permit, overstay, falsifies or counterfeit visa, and etc.[21] most of legal violation often be conducted by the foreigners is staying after the expiration of immigration permit (overstay) and done activities not the same as the immigration stay permit.[22]

Every country arranges and manages patterns and permission of foreigners to entry to its country. Management concerning to stay permit including its limitation of stay permit period as a metaphor of national interest to do good to the country by managing regulation and implementing under the guidelines stipulated on Pancasila and UUD 1945. Whilst the limitation of period of stay of

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[21] Penal Provision Chapter VIII, Law No. 9 in 1992.

[22] Annual Report of Directorate General of Immigration in 2001-2006, Directorate Investigation and Immigration Detention.

foreigners in the country for the purpose of protecting national interest in the aspects of social, manpower, economy, culture, ideology, security and safeties.

Figuring in percentage total number of immigration law violation in 2001 was 1502 cases and 703 of it was overstay; in 2002, total number of legal violation was 2.282 and part of 520 persons were overstay; in 2003, total of legal violation was 2.295 in which 547 persons were overstay; in 2004, total number of overstay persons were 669 from the total case was 2.332; in 2005, about 262 persons were overstay from 1920 cases; in 2006, total number of immigration legal violation was 1889 and 705 persons of them were; and in 2007, total number of immigration law violation was 1834 and 602 of them were overstay.

Immigration legal violation may relatively increase annually in number, this portrayed it may still has a weakness to deal with immigration law enforcement and in regard to the control of people traffic and migration at the borders. These weaknesses in enforcement law if it not be coping with immediately, so thus it may lead to disguise public trust to legal system in Indonesia.

In this reformation era and the mature of public opinion, one of the aspects as a social attention to be fixed is legal enforcement, the level of public trust may be poor to the matters of law enforcement and this may lead to have a negative impact as such the extent of criminality and other violation.[23] This general picture of law enforcement in Indonesia referring to the report of Asian Intelligent Issue in 1997 is which placing Indonesia as a country with the high level of corruption. Moreover, considering to the report of Political and Economic Risk Consultancy (PERC) was placing Indonesia as the same level with China and India in terms of political and economical condition was seem unfortunate in 1997.[24] And the data by time is relatively having significantly changes and it portrayed in International Transparency (2006) which stated that Indonesia was at 6th level of high level on corruption among 133 countries.

Besides this condition, based on the research conducted by National Planning Development Agency (Badan Perencanaan Pembangunan Nasional (Bappenas)), legal system in Indonesia was at the level of "emergency" (des-

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[23] Achmad Ali, Keterpurukan Hukum di Indonesia (Penyebab dan Solusinya), Jakarta: Ghalia Indonesia, 2001, 100-101.

[24] Juanda, Paradigma dalam Memerangi Tindak Pidana Korupsi di Indonesia, Makalah, Bengkulu, 2003, 1.

perate but not hopeless). This research was assessed by analyzing the weaknesses of legal development in Indonesia for the past 30 years. It is because due to the concerns happened in 1998, and may assume weak or fragile at legal fundamental system as such court system in Indonesia. This may lead the public trust decreased their belief to the legal institutions.[25]

As been mentioned by Soerjono Soekanto[26] that only four factors determine the functioned actions in legal principals as such: legal mainstream or the legal instrument itself, officers or apparatus be decided, facility be expected to support the implementation of legal principals, and social public whom be affected to the regulations. Therefore, in causality basis among legal in instruments, law enforcement apparatus, with legal awareness and community obey the rules are interconnected. These three elements have to be functioned so thus the image and dignity of legal institutions can be attained.[27] According to Gde Pantja Astawa[28], the important thing in law enforcement is the persons who be given the tasks for legal enforcement as such legal enforcement apparatus. If the system is good but the persons are badly terrible; hence the legal enforcement may not be run. However, no matter how bad the system, but if the persons are clean, thus the legal enforcement still be running.

In the process of immigration law enforcement process, that parameter is important because the determination of whether one case be solved through the process of penal law of administrative law be placing in the discretion authority of the immigration officer itself, which in particular term usually leads to cause an obscure of legal certainty and may not meet the legal justice fulfillment. Therefore, it requires standard limitation and clear category in the process of legal enforcement process that have been run between penal legal action and administrative law, so thus it will not be hung up at the personal judgment of the immigration officer itself; however, by complying to regulation and legal procedure by considering on how the finalization of immigration proportion is correct, effective, and efficient.

To be dully mindful that the correct legal enforcement policy should be minimized the extent of legal violation or immigration penal action can be con-

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[25] Mardjono Reksodiputro, Arah Reformasi Hukum Nasional, Makalah, Jakarta, 2003, 12.

[26] Soerjono Soekanto, Penegakan Hukum, Jakarta: Binacipta, 1983, 30.

[27] Sjahran Basah, Tiga Tulisan tentang Hukum, Bandung: Armico, 1986, 9-10.

[28] I Gde Pantja Astawa, "Hukum Indonesia seperti Langit dan Bumi, " Jurnal Sosial Politik Vol. 2, No. 2, 2001, 66-67.

ducted effectively in accordance with the purpose of legal decided punishment. That legal enforcement policy should be as an endeavor to prevent and pre-emptive actions in anticipating negative impacts of the high risks of immigration legal violation.[29]

Above mentioned analysis are as such depicted pictures of immigration legal enforcement in Indonesia by referring and following the cases occurring in the period of the research in regard to the existence of Indonesian and foreigners investigated cases of doing immigration legal violation in Indonesia.

V. Irregular Immigrants in the Context of National Law in Indonesia

For foreigners enter to Indonesia requiring to have permission as such visa as a permit to enter be given to foreigners when they enter to immigration checkpoint and this stay permission in accordance with the given visa having by them. These three formats of permission may relate to the tempos or period of staying which mentioning the locus where they will be staying in the country to conduct the purposes of staying of them while in Indonesia. If they are staying more than a period of said document, this would be said overstay and if conducted activities not in accordance with the purpose of their staying, for instance, a tourist and he/she ended up with working activities, this be saying misuse immigration permits.[30] Progress on immigration policy at the aspects of management and law enforcement has happened until recently stimulatingly be believed to sustain regulations in immigration matters in line with contemporary matters and as guarantee to legal enforcement system confirming justice, certainty and promotion.

This regular circumstance as immigration activities as such immigration activities between countries, and nowadays this condition of immigration activities are more becoming multidimensional, because instead of it the task of country

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[29]Law enforcement policy contemporarily and extraordinarily has been conducted by Indonesia in the reformation era. Many efforts have been done by government to form new institution formats as such law enforcement system, business court tribunal, human rights court, corruption eradication commission,judicial commission, ombudsman commission, human rights national commission, and other institutions which support the law enforcement in Indonesia. Besides the forming of those law structures, court legal procedure has been conducted to balance in accordance with sustainable community development and material law development.

[30] Staying more than the said immigration document is to stay in the country over to the period be given to stay be punished at article 42 and article 52, Law No. 9 in 1992 concerning to Immigration, and than the violation of stay permit is doing activities not in accordance with the purpose of staying and remaining can be punished in article 42 and article 50 Law No. 9 in 1992.

in managing people traffic, it relates also to protect sovereignty and law enforcement matter. Moreover, it may be possible, within the flow of regular immigration activities, it may emerge condition of irregular migration in the aspects of internal and external factors of the ruler country. The internal condition as such a political willingness initiation to implement policy in regard to external condition emerging from other country. The externalities perception may influence the internalities' intentions of a country and it may allow the internalities factor to have a spirit of international human rights as a legitimate reality to maintain humanitarian upholding figure to the good of this country. This objective condition may be seen at the level of how the country may manage the extent of dealing with irregular immigrants who approach to its borders.

In national level relating to human rights context, as stipulating in UUD 1945 (amendment 4th in 2000) has ruled to the extent of protection for the term of asylum seekers in Indonesia as stated in article 28G(2).[31] In other words, Indonesia has decided and determined in constitutional manner the rights of asylum seekers in its constitutional format of its positive existing law. Other national law concerning to the rights of asylum protection also be laid down in Human Rights Law (Law No. 39 in 1999); Law concerning International Relation (Law No. 37 in 1999) and Extradition Law (Law No. 1 in 1979).[32]

Indonesia has experienced humanitarian efforts to deal with the extent of refugee and asylum seekers since the Circular Minister No. 11/R.I/1956 concerning to protection of political asylum;[33] and be followed with the 1975 management of the influx of Vietnamese refugees temporarily placing in Pulau Galang and the latest voluntary return arrangement happened in June 30th 1996 (this last caseload was repatriated 4000 Vietnamese from the total of 83.000 in Indonesia since 1975 and the major influx in 1979;)[34] and the latest period arrangement has been dealt with since 1999.

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[31]In UUD 1945 article 28G (2) states: "Every person has the rights to be free from torture which demoralize human dignity and has rights to seek asylum to other country."

[32] Law No. 37 in 1999 stipulates: authority to give asylum to foreigner at the hand of President by considering to Minister assessment (article 25); the granting of asylum to foreigner be done by complying to national legislative regulations and by considering to law consideration, customary, and international practice (article 26); and President endorses policy of refugee concerns from outside thecountry by referring to Minister assessment (article 27).Government policy No. 39 in 1999 states that: (i) every person has rights to seek asylum for the political protection at other country; (ii) rights as stated at (i) not be applied to non-political crime or committing to offences against U.N. principles.Meanwhile, UU No. 1 in 1979 concerning to Extradition in particular article 5 (1) outlines that extradition cannot be conducted for political offences.

At national level of those legal institutions, they have affirmed the existence of asylum seekers and refugees status as national legitimate recognition in formulating human rights acknowledgment in the territorial state of the country. During the time of ruling laws acknowledging this humanitarian recognition, this condition for the asylum seekers and refugees which lay in the extent of irregular immigrants while they are coming in Indonesia not yet been bounded in operational legitimate instrument be possible granted the humanitarian effort in dealing with the arrival of asylum seekers and refugees in the territory of the country.

At those consecutive periods on how Indonesia deal with and manage to the arrival of refugees and asylum seekers in the country, it still not yet be emerged the national instrument to confirm international instrument to the level of national policy to be implemented to anticipate the problems of refugees and asylum seekers arrival to Indonesia. The context in regard to the legitimate implementation of the existence of irregular immigrants be acknowledged in Geneva Convention in 1951 and 1967 New York Protocol, and Indonesia may not yet be the participant country to ratify these international instruments.[35]

Indonesia had not had a legitimate instrument in lex specialis or in particular format to deal with the existence of refugees and asylum seekers. The problems in relation to the existence of regular and irregular immigrants in the context of refugee and asylum seekers are in the extent of immigration normative activities and immigration law enforcement.

The vacuum legitimate national instrument to respect and acknowledge human rights to asylum seekers and refugees in particular experienced in the beginning of 2001 as a consequence of migration influx of the migrants from Southern Asia, on September 30th 2002, Director General of Immigration de-

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[33] Prime Minister Circular Letter No.11/R.I./1956 concerning to guidelines to deal with political fugitive be given protection while entering to Indonesia. However, this Circular letter is not specifically stating what sorts of nationality or citizenship protected in the provision of this Prime Minister Circular Letter in 1956. Article 1 states that political fugitive enter to Indonesia protected according to the basic of human rights principle and basic self-determining in accordance with international customary law and be implemented during the time as been declared in article 14 of Universal Declaration of Human Rights in 1948.

[34] Arie J. Kumaat, "Vietnamese Boat People on Galang Island," Paper, 30 July 1989, 5.

[35] General obligation for refugees as stated on article 2 of the 1951 Geneva Convention concerning to the status of refugees which affirms that every refugee has obligation to country where they are staying which requires to abide to legislation and regulation in that country and their actions and activities should be sustained to general harmony.

cided Its Circular Letter (Surat Edaran (SE)) No.F-IL.01.10-1297 to deal with on how to manage foreigners stating themselves as refugee and asylum seeker.[36]

Therefore in the matters to deal with the arrival of irregular immigrants from the conflicted country of Southern Asia, which they were not supported with appropriate travel document as stipulated in Law No. 9 in 1992 and since the beginning of their arrival they stated themselves as refugee and asylum seeker, Immigration officers at operational level should communicate with United Nations High Commission for Refugees (UNHCR) to finalize their refugees status determination application (and also in regard to the extension of asylum and refugee permit). The policy of Directorate General of Immigration in 2002 has been strengthened by the Director General of Immigration Decree (regulation) No.IMI-1489.UM.08.05 in year 2010 in dealing with illegal immigrants in Indonesia.

VI. Humanitarian Efforts Policy to Irregular Immigrants

Since the implementation of discretion policy of Law No. 9 in 1992, was happened in 2002, to implement the robust policy echoing human rights values until recently data as of August 2010, it has recorded 2397 cases of asylum seekers (from total cases of 2643 from 30 countries and 1 case of Indonesian apply the asylum) has been actively handled by.[37] And the case has been dealt by UNHCR in Indonesia as such 584 cases (this figure includes 841 persons).[38]

As the country still not yet be the participant of Geneva Convention in 1951 concerning to the status of refugees, Indonesia intensively coordinate with UNHCR to do UNHCR Statute in determining the status of refugees which their caseloads of refugees and asylum seekers in the country. Thus far, if Indonesia may be the participating country of Geneva Convention in 1951 with all

[36] Surat Edaran (SE) of Director General of Immigration No.F-IL.01.10-1297 in 2002 affirming to reject the foreigner who enter to Indonesia without supported with required procedure complying to required provision; and if finding the case of the asylum arrival in Indonesia not be punished by immigration action as such deportation or repatriation to the country where they live and safeties are in danger and high risks; in condition that technical officer found indication that foreigner arriving in Indonesia and declaring themselves as refugee and asylum seekers, technical officer should contact UNHCR in determining the status of that foreigner; and observing and controlling qualitatively and quantitatively be done by Immigration local office and periodically be reported to the Director of Investigation and Immigration Measures in accordance with the task and function.

the rights and responsibilities, Indonesia still has to coordinate with UNHCR in regard to the implementation of articles of this convention to deal with the management concept of irregular immigrants by ratifying this convention to the positive law in Indonesia.[39]

Until recently, in dealing with refugee and asylum seeker as depicted as irregular immigrants in Indonesia, this policy echoing humanitarian effort has arranged synergy with management, arrangement, and control of irregular immigrants in the status of refugees and asylum seekers which these necessarily require those irregular immigrants to be assessed their interview to UNHCR office in Jakarta, and *tempos* arrangement be possible of these irregular immigrants be permitted stay in the record at UNHCR.

Coordination of Directorate General of Immigration with UNHCR in dealing with irregular immigrants in Indonesia be conducted since the caseloads of irregular immigrants has arrived and waited for the process of their refugee status determination (for the asylum seekers) and wait for the process of refugee to be settled at the third country (the country where their refugee application be accepted). Or else for them whose asylum application and refugee status be rejected by UNHCR Jakarta; hence their existence in Indonesia become illegal and they would be obviously placed in Immigration Detention Center and prepare them to do assisted voluntary return to their origin country.

Cooperation with Directorate General of Immigration and UNHCR has been done to enhance capacity building[40] of immigration officers and to dis-

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[37]Based on UNHCR data as of 31st August 2010, 30 countries where their nationals seek asylum to be refugee as follows: Afganistan (1859 persons), Irak (335 persons), Sri Lanka (225 persons), Iran (102 persons), Somalia (31 persons), Myanmar (21 persons), Cameroon (12 persons), Guinea (10 persons), Pakistan (5 persons), Ivory Coast (5 persons), Congo (3 persons), China (5 persons), Algeria (3 persons), Tunisia (2 persons), Nigeria (2 persons), Egypt (7 persons), Sierra Leone (2 persons), Morocco (2 persons), Mauritania (1 person), Kuwait (1 person), Burundi (1 person), Ethiopia (1 person), Cuba (1 person), Liberia (1 person), Rwanda (1 person), Palestine (1 person), Sudan (1 person), Syria (1 person), Indonesia (1 person), and Albania (1 person).

[38] Based on UNHCR Jakarta record as of 31 August 2010 that the total cases be decided as refugees by as follows: Afganistan (295 persons), Sri Lanka (210 persons), Iraq (152 persons), Myanmar (64 persons), Somalia (57 persons), Iran (30 persons), Congo (11 persons), China (3 persons), Ivory Coast (2 persons), Palestine (3 persons), Pakistan (4 persons), Kuwait (6 persons), Egypt (2 persons), Guinea (1 person) and Ukraine (1 person).

[39] Article 35 of Geneva Convention in 1951 concerning to the Status of Refugees.

[40] Capacity building patterns as joint cooperation between Imigrasi and UNHCR as such training in Refugee Status Determination (RSD) conducted three times annually and be participated by Immigration officers assigning nearby to the location where training will be held.

seminate workshop in regard to humanitarian law and the roles of UNHCR in Indonesia to immigration officers and local government from institution officially working in the location of workshops.[41]

Besides coordination with UNHCR to do UNHCR Statute in dealing with irregular immigrants in Indonesia, Directorate General cooperates with International Organization for Migration (IOM) in enhancing and developing the management and supervision towards irregular immigrants within the territory of Indonesia, as well as to further intensify the already established cooperation between the Parties in the field of migration management.[42] The purpose of this technical cooperation arrangement is to provide a framework for the implementation of the "Management and Care of Irregular Immigrants" Project within the territory of Indonesia, in accordance with the principle of Good Governance.

To achieve the objective of management framework towards irregular immigrants and the principle of good governance and also for the good to the country in another extent, Directorate General of Immigration is responsible for the coordination of the roles of its officers involved in the various projects activities for refurbishment and upgrading/expansion of facility or doing minor refurbishment at Immigration Detention Center (Rumah Detensi Imigrasi (RUDENIM)) be agreed with IOM and Indonesia. So thus, the role of Indonesian government should be guarantee and ensure the legal status of the land which is used for the project which be supported by IOM for the management of the project and monitoring of the project budget to ensure that the various project components are implemented in accordance with the financial requirements and within the project boundaries and be granted the project to Indonesia (Directorate General of Immigration) after the project be substantially completed.

Moreover, cooperation between Imigrasi and IOM develop of guidelines

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[41] Referring to cooperation schedule between Imigrasi and UNHCR, in this 2010 program, both institutions agreed to have humanitarian workshop at 20 locations across the country as such: Banten, Tanjung Pinang, Kupang, Maumere, Makassar, Manado, Lampung, Bogor, Pontianak, Mataram, Kendari, Medan, Aceh, Ambon, Surabaya, Malang, Sumba, Balikpapan, Bali and Merauke.

[42] Currently between Indonesia and IOM signed technical cooperation arrangement on March 16th 2008 concerning to management and care of irregular immigrants project for Indonesia. This technical cooperation is referring to the arrangement signed in Jakarta on October 14th 2004 as an umbrella of current technical cooperation.

and associated training programs for the improvement of the level of care and support for irregular migrants taken into custody in Immigration Detention House and the continued assistance for the care and maintenance of irregular migrants intercepted en route to third countries including medical services and food supplies. And for the non-regular migrants which their refugee status be rejected by UNHCR; therefore, the voluntarily return to their country of origin may be addressed through capacity building of the immigration officers.

In regard to progress assessment and actual existence of non-regular migrants in Indonesia, Directorate General of Immigration may require additional development of the existing Immigration Detention Center (RUDENIM) which is currently having 13+1 units.[43] The additional development of building the new RUDENIM be required in considering the anticipation of capacity of current existing RUDENIM (currently the formation of RUDENIM is 13+1 whereas the total capacity is 1189 persons), and if the occurrence of overcapacity and to manage the renovation or refurbishment arrangement to these existing units. To the extent of proposing RUDENIM specification, it may coherence with the robust policy of Imigrasi to determine and uphold the law enforcement measures and to conduct Imigrasi's roles as the government institution of Indonesia in performing Indonesia's good intention to do sharing responsibility in dealing with global perspective concerns on international refugees.

In the context of law enforcement and humanitarian efforts, Directorate General of Immigration has tasks and responsibilities to uphold Indonesia's national interest in Indonesia by considering policy decision making by paying attention to the relationship between the status of irregular immigrants and the conditions of existence (placement) of those irregular immigrants in Indonesian national law.

This irregular condition would lead to the focus on how to determine immigration policy to play two significant role in law enforcement and humanitarian efforts for dealing with the status of irregular immigrants, which correlate to the status of refugees, asylum seekers, and illegal immigrants (the immigrants who do immigration legal violation and immigrants who wait for the process of deportation) to be placed in RUDENIM with essentially at least to meet the mini-

[43]Total number of RUDENIM in Indonesia is 13+1 units as such: Medan, Pekanbaru, Jakarta, Pontianak, Makasar, Kupang, Tanjung Pinang (Central RUDENIM), Balikpapan, Manado, Surabaya, Denpasar, Semarang, Jayapura and Immigration Detention Room at immigration headquarter.

mum standard of international protection and the controlling/inspection of irregular immigrants in Indonesia. Directorate General of Immigration until May 2010 has dealt with the humanitarian efforts to place the refugees and asylum seekers consisting of families, females, and children at guest houses which be facilitated by IOM and be observed under the responsibility of local immigration office.[44]

Dealing with irregular immigrants in Indonesia requires attention in all aspects. Problems in regard to secondary movement[45] at the borders with neighboring country of Indonesia have to be coordinated by international and bilateral cooperation. Considering to evaluation and cooperation efforts to cope with illegal migrants (irregular immigrants) with UNHCR, Indonesian government (Ministry of Foreign Affairs) has notified deeply concerns to UNHCR through Aide Memoire on January 15th 2010 and be addressed at Bali Process forum[46] (dated June 10-11 2010) to receive following attention from UNHCR. The profoundly political dissent is encapsulated as follows:

a. The anticipation of secondary movement in the region[47]
   At the paramount case of illegal immigrants from Sri Lanka arrival in Indonesia, Indonesian Government found most of the holding the asylum

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[44] Until May 2010 it was recorded that 581 refugees and asylum seekers (consisting of families, females and children) residing outside RUDENIM (staying in guest house). These 581 refugees and asylum seekers are residing in Makasar (19 persons), Mataram (202 persons), Cisarua (147 persons), Jakarta (29 persons), Medan (145 persons) and Lampung (39 persons).

[45] Secondary movement is the term to describe the movement of non-regular migrants (refugees and asylum seekers) from one country where UNHCR issued permission document at that country; however, they move to other country for the purpose of arriving to their destination country.

[46]Bali Process Forum begun in 2002 facilitated by International Organization for Migration (IOM). Protection of refugees and asylum seekers globally be discussed in this regional forum gathering from the countries categorized as sourcing countries, transit countries and destination countries.The scope of discussion in this Bali Process Forum consists of three levels of conference as such: (1) Bali Process Regional Minister Committee (BPRMC) as meeting conference at ministerial level; (2) Bali Process Ad Hoc Group as meeting at the level of Directorate General of Immigration; and (3) Bali Process Workshop as meeting among technical officers to discuss thematically issues on immigration and regional security.

[47] Based on the data in the period of August 2008- May 6th 2010 there have been 124 cases which be intercepted to cope with illegal crossing matters (crossing border to other country illegally) those non-regular migrants (irregular immigrants) cross the border from Malaysia to Indonesia. About 33 cases of illegal exit done by non-regular migrants (irregular immigrants) attempts to go to Australia conducted by 1232 persons of irregular immigrants. And about 91 cases of illegal entry of non-regular migrants (irregular immigrants) coming from Malaysia to Indonesia conducted by 2075 persons of non-regular migrants.

seekers certificate (attestation letter) and refugee certificate issued by UNHCR office outside the country. This can be seen as the increasing number of secondary movement in Asia region. Indonesian government requests to representatives of UNHCR in Jakarta to pay attention in this regard and UNHCR can implement controlling system to prevent the case of refugees doing secondary movement.

b. Dealing with the unintended impact from waiting period for resettlement
The period of waiting for resettlement process for the holder of UNHCR certificate may bring about a negative impact to the transiting country. This negative impact includes social concern to the local community, legal violation, and misuse of UNHCR certificate. Moreover, the long period of waiting for the resettlement process has made them to do secondary movement. Indonesian government views it is important that UNHCR offices in the Asia's region to discuss this matter to anticipate and to deal with prevention of the negative impact of the extended period of waiting for resettlement program.

c. Finding comprehensive solution
Arrangement mechanism which implement for an ad hoc program at UNHCR offices has proved not adequate to deal with diverse problems engaged to criminal actors, victims, or synergically support the efforts done by the governments in the Asia's region. Indonesian government has perceived for UNHCR offices in the region to contribute in finding comprehensive solution in dealing with illegal population movement in the region.

Along with humanitarian efforts done by the Directorate General of Immigration whose has responsibility horizontally to the Indonesian government, this institution also carries out preventive efforts in dealing with non-regular migrants (irregular immigrants) in the country to meet the enforcement tasks. Beginning on 17th September 2010, Directorate General of Immigration has regulated the Director General of Immigration Decree (regulation) No.IMI-1489.UM.08.05 in 2010, to cope with illegal immigrants, in which this policy states that illegal immigrant is foreigner come/reside in Indonesia's territory not in accordance with legal provision and related regulations and be corrected to be punished to immigration actions if be found illegally staying in the country. To the extent if this illegal immigrants affirm themselves would like seek asylum and/or to the particular reason can not be decided to deportation measure; therefore, the Directorate General of Immigration coordinates with international

organization dealing with refugees and/or UNHCR for determining their status.

Management mechanism to deal with non-regular migrants (irregular immigrants) in Indonesia with acknowledging protection efforts as been standardized by UNHCR; so thus to illegal immigrants cannot be disquieting their stay permit status while they are in Indonesia to the extent of: (a) having attestation letter or statement letter as asylum seekers from UNHCR; or (b) holding refugee status from UNHCR. Moreover, in this Director General of Immigration Decree (regulation) affirms that illegal immigrant can be placed in certain places under the facilitation of international organization dealing with refugees or UNHCR, and this refugee existence requires to be reported by UNHCR to the Director General of Immigration and the observation and control of them as being taken care by the Local Immigration Office.

For the purpose of observation and control of irregular immigrants, Directorate General of Immigration conducts registration of irregular immigrants in regard to their biometrics images as such facial image and finger prints. To the extent of observation and control, the existence of irregular immigrants has to be determined in regard to the status of irregular immigrants itself, and specifically notifying the location where they are placing or at RUDENIM where these non-regular migrants (irregular immigrants) staying in Indonesia. Bilateral and international cooperation until nowadays have been conducted by Directorate General of Immigration for robust management in dealing with refugees and asylum seekers by being mindful to human rights principles as advocating at all levels of international law in regard to human rights.

VI. Conclusion

Utopia condition of implementing human rights law entirely is as an admirable condition to all mankind universally without exception where rights and responsibilities are inherent acknowledged at international law by which the country, its nations/citizens and foreigners, refugees and asylum seekers who seek asylum to that country are taking care and complying with. The asylum seeker in the country cannot be viewed as rights which have to be perceived by persons who seek asylum at the country; however, this condition may involve the needs and accepted condition of the country in regard to how this country accepts asylum seekers and allows them to reside or stay in this territorial country which it also requires the refugees and asylum seekers to obey national rules

and regulations in the country where they are currently staying to leave from terrifying condition happening in their home country where they are originally coming from or where they were previously living to the country whose their citizenship issued by that country.

The main factor on international protection to the refugees is stated by international law as the limited subject (or international law subject with limitation), it is as minimum standard guarantee for meeting human rights essences in implementing protection condition. In the perspective of international law, the migration to other country due to personal concerns and other country receive this migration in the reason of humanitarian matter, this condition supports this migrant to be done their asylum status determination by international organization in managing global refugee as such UNHCR.

The existence of refugee as the subject of international law has been stated by international conventions in global and regional areas. Therefore, for the country which is not the participating country of the 1951 convention, in deal with the arrival of refugees at their sovereign borders is by offering humanitarian values to those non-regular migrants complying to be stated in UNHCR Statute. Not doing refoulement measure to refugees where their lives and safeties are in risk as guideline in dealing with the policy to solve non-regular migrants (irregular immigrants) in Indonesia.

Considering the condition of country which international laws recognize that the implementation policies to receive and reject the foreigner to their borders as the implementation of immigration national policy to protect their national interest at immigration extents. Humanitarian and human rights are the two matters as considerations to implement decisive policy in dealing with the management of immigration in its own sovereign country.

However, the most important thing of both matters is the national condition in regard to national interest to arrange the management of non-regular migration (irregular immigrations) shall be appreciated. Indonesia perceives that the concern of irregular immigrants is not only a single homework of one country, by viewing the extents of secondary movement in the region. As with the neighboring country of Indonesia, Australia, which may be affected by secondary movement from Indonesia through the actions done by the irregular immigrants to do illegal exit to approach Australian borders. The concerns of irregular immigrants are likely the same as a pipeline, it requires consistent work and

positive efforts to deal with irregular immigrants in Indonesia by doing bilateral and international cooperation with IOM and UNHCR and with the Bali Process Forum to cope with this irregular migration concerns.

The vacuum of national law in managing immigration management pattern to irregular immigrations requires the robust legal policy by the Directorate General of Immigration in dealing with influx condition of irregular immigrations and the existence of foreigners inside the country as illegal immigrants and then announcing themselves as asylum seekers and refugees. This trend of applying asylum may cause certain impacts in the extents of ideology, politic, economic, social culture, national security and immigration vulnerability. To minimize this diverse impacts of the existence of illegal immigrants who then they declare themselves as refugees and asylum seekers; therefore, the Directorate General of Immigration on September 17th 2010, decide to legalize the Director General of Immigration Decree No.IMI-1489.UM.08.05 in 2010.

In operational level, most of the attitude of irregular immigrants may be found doing counterfeit their asylum seekers document (attestation letter) and the notification letter of refugee status, and may attempt to discredit the Directorate General of Immigration with an obscure and absurd fake/bogus condition to challenge this institution. For illegal immigrants according to national law provision may not meet appreciation attitude and manner to the national law be possible to be given the immigration actions. And then for those as illegal immigrants who affirm themselves to seek asylum, they may not be conducted deportation in regard to certain reasons, and the Directorate General of Immigration will coordinate with UNHCR Indonesia for their refugee status determination. In other words, the implementation of immigration actions as such deportation may be tolerated and be accepted not to be exercised to the illegal immigrants in the reason of humanitarian compliment for them where the finalization of their asylum seeking determination (attestation letter) has to be attained by UNHCR representative in Indonesia to enhance our cooperation to focus in dealing with illegal immigrants in Indonesia.

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