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The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 146 POLICIES OF INDONESIA IN CRIMINAL LAW ENFORCEMENT AGAINST ILLEGAL MIGRANTS **Hanafi Arief Faculty of Law,** Universitas Islam Kalimantan Banjarmasin hanafi_arief@yahoo.com ABSTRACT Indonesia is one of the **countries in the world** that potentially is wide for the the practice of transnational crime.

Transnational crime is not just caused by the wide open of free trade or the weakness of law enforcement in Indonesia, but is caused by the geographical area of Indonesia itself. Indonesia geographically an archipelago country that has many entrances: such as airports, ports, lands and water boundaries. Indonesia has a very long coastline, a region located as the traffic of crossword world trade lanes.

This **is a major factor** that potentially causes Indonesia open with the occurrence of transnational crime. Transnational crime in Indonesia may also occur because of Indonesia's large population, so that it becomes a country that has a large labor source and as a target for the development of international markets.

Various constraints are faced by Indonesia in dealing with the question of transnational crime, such as less competent human resources, less technological mastery, and legally and diplomatically is weak. Key Words: Policy, Criminal Law, Enforcement, Illegal Migrant INTRODUCTION The globalization era opens opportunities for the opening of cross-country of free trade market. Each country has a great opportunity to complement each other's needs in the country, both in terms of infrastructure and superstructure.

Globalization is accompanied by technological advances. The development of information and transportation technology is increasing, making the boundaries between countries more apparent. Traffic paths are even easier to access.

The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 147 **Migration is not a new** phenomenon. Over the centuries, humans have traveled to move **to seek a better life elsewhere.**

In the last few decades, the process of globalization has increased the factors that drive immigrants **to seek their fortunes** abroad. This has led to **an increase in the number of** migration activities from developing countries in Asia, Africa, South America and Eastern Europe to Western Europe, Australia and North America.

Based on this phenomenon is then emerged the practice of irregularities, namely to take action to move people to destination countries illegally because of the limitations and inadequacies of immigrants in eligible as an official immigrant. As stated by Patrick Manning that migration by human-homo sapiens had occurred since forty thousand years before Christ.

The main thrust of migration at that time was generally derived from the natural instinct of humankind to find a place to live or a living area that could provide security and comfort. History records that the Canaanites as called Palestinians migrated from Asia to Europe, as did the Romans in their heyday and other nations.¹ Many countries agreed that migration is not conducted by the law of immigration (illegal) so that this activity will be threatening sovereignty, security, social and economic life, and even threatening the ideology of a country.

Not to mention illegal migration be stopped, a new variant has arisen that is now increasingly prominent, namely smuggling of human beings (people smuggling), and human trafficking (human trafficking).² 1 **IOM, Buku Petunjuk Bagi Petugas Dalam Rangka Penanganan Kegiatan Penyelundupan Manusia dan Tindak Pidana yang Berkaitan dengan Penyelundupan Manusia, (Jakarta : 2009),** pl.24.

2 Ibid **The Joint International Conference** & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 148 **LAW ENFORCEMENT TOWARDS ILLEGAL MIGRANT** The policy of making good criminal law regulation, particularly with regard to the crime of illegal immigrant

really may not be avoided from the purpose of tackling immigration crime.

Barda Nawawi Arief,³ explained that the policy or criminal law politics is also a part of criminality. In other words, when it is viewed from the angle of criminal politics perspectives, law politics is synonymous with the policy of criminal law. The policy of criminal law towards illegal immigrants must be viewed from the efforts to give protections against people and as **an integral part of** the nation buildings.

The final objective of the policy of criminal law is social welfare. The effort of combatting the crimes of illegal immigrants with a criminal law in fact is also part of the efforts for law enforcement. Therefore it is also said, that the policy of criminal law is part of law enforcement policies.

In addition the crime prevention efforts through **the creation of** criminal law in fact is also **an integral part of** the legal protection of social welfare. ⁴ Human being is the object of performing functions, duties and authorities of Immigration implementation, which can not be separated from one's citizenship. Citizenship is the only relationship between an individual and a country that guarantees the granting of rights and obligations to international law.

⁵ Citizenship can not be separated even from a legal relationship between sovereign country on one side and its citizens on the other. The fundamental foundation of ³ Barda Nawawi Arief, 1996. Bunga Rampai Kebijakan hukum pidana, Citra Aditya Bakti Bandung. p.29. ⁴ Ibid, p.30 ⁵ Starke J.G., Pengantar Hukum Internasional 2, edisi kesembilan (Jakarta : Penerbit Aksara Pustaka Indonesia cet 1984), p. 23.

The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 149 one's citizenship is one's membership. This legal relationship includes rights and obligations and both on the part of citizens and on the other.⁶

The implementer of the legal relationship needs to be implemented in an organization or agency that takes care of human path between the state as a form of reflection of **the rule of law and** state sovereignty. By the international law, the aspect of citizenship is the right to diplomatic protection abroad and this is an essential attribute, in which the state is responsible for protecting its citizens which reflects the correlative and loyalty aspects and protection of " protectio civitatis subjectionem et subjectio protectionem"⁷ **Indonesia is a unitary state** as mandated in Article 1 paragraph (1) of the 1945 Constitution.

Judging from its geography and demographics, Indonesia is one of the countries that has strategic cross-border routes. Consequently the progress of the era of globalization is including the development of information technology, communication and transportation, and as the increasing trend of global international relationships that encourages the flow of human traffic between countries, then the linkage raises the complexity of the problem of human mobility between countries.

In relation to Article 26 point (1) of the 1945 Constitution, the citizens are indigenous Indonesians and other nations passed by law as citizens. As it has been said that the principle of this selective policy states that the beneficiaries can be granted entry permits and that harm and order to the nation and state can not be granted permission to enter and reside in the territory of 6 Starke J.G.,

Pengantar Hukum Internasional 2, edisi kesembilan (Jakarta : Penerbit Aksara Pustaka Indonesia cet 1984), p. 23. 7 Ibid., p. 25. The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues Between Countries In The Perspective Of Comparative Law " 150 Indonesia.

In the grantee of this entry permit are found many policies to attract tourists such as visa-free for certain people or countries or certain other policies that promote Indonesia as a conducive country to foreign investment and coupled with the increasing traffic of foreigners that enter and exit from one country to another that causes the flow of information and mobility of people is also increasingly fast and global, as well as in Indonesia where the people go to Indonesia as there is no distance between countries and countries can no longer do insulation -the nearness of the country or in terms is also called borderless world.

Globalization era makes Indonesia open for entry of foreign citizens to have good activities in the field of industry, tourism and other trades. In order to ensure the stability of foreigners in Indonesia the regulation of the rights and obligations of foreigners as regulated in Law no. 6 of 2011 on Immigration. To ensure that the provisions of this law are adhered to in this law also be regulated in criminal law which regulates certain actions that are qualified as criminal acts in the field of immigration by foreigners.

However, in the Immigration law, other than stipulated on the criminal provisions, there are also immigration measures that are non-justicial or more emphasized in administrative terms. This is in line with the system adopted in criminal law, namely the existence of a two-track system of criminal (punishment and measurement/straf system

en maatregels system).

In order to overcome the criminal acts committed by foreigners, it is necessary to pay attention to the function of criminal law as ultimum remedium which is used if other efforts are not expected to give satisfactory results or not as expected. **The Joint International Conference** & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 151 Regarding regulatory issues concerning the handling of illegal immigrants **under the guise of** human smuggling victims or in the protection status of these seekers and refugees who have not been regulated nationally in a statutory regulation.

That is why it is necessary to perform a legal reform of national development. Renewal of national law as part of this series of national development is done thoroughly and integrated criminal law, civil law, administrative law, including formal law and material law. The reform of criminal law is not only about the substance of the matter, but it is related to the existence of values.⁸

Therefore, he stated that the revision of criminal law is essentially meaningful, an attempt to reorient and reform the criminal law **in accordance with the** socio - political, socio - political and socio - cultural values of Indonesian society underlying social policies, criminal policies and enforcement policies law in Indonesia. The criminal law policy essentially contains the state's policy in regulating and limiting the power, **as well as the** authority of society to act and behave and the power or authority in upholding its duty to ensure that the community is obedient to the established rules.

Based on the facts, in order to overcome the problem of illegal immigrants, it is necessary to have an approach oriented to criminal law policy or formulation of policy which is part of criminal policy by means of criminal law, and therefore including part of "criminal law policy". The formulation of policy which is the policy in determining an action. It can lead to a reform of penal law 8 Barda Nawawi Arief, Op. cit, p.28.

The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 152 to address the problem of illegal immigrants in the context of the future handling of human smuggling. Immigration crime is any act that violates immigration rules in the form of crime and violation of criminal penalty.

Immigration law enforcement **in the territory of** Indonesia either preventively or

repressively pursued, among others, through immigration action. Immigration crime is basically in addition to its nature as an international and transnational crime and implemented in an organized manner, is also very harmful to the public. So it needs a serious criminal penalty in order to provide a deterrent effect for foreigners who commit violations.

Immigration crime has been regulated in the Law 6, 2011 on Immigration follows with the penal sanctions imposed on the violators. Based on article 113 of Law 6, 2011, it can be interpreted simply that the meaning of illegal immigrants are: a. a person who enters in a country without any check at the Immigration Check point (illegal entry); b. a person who resides in a country by violating permit; c.

a person who is a victim of a network of people smuggling and trafficking; d. a person who deliberately harasses the International asylum system (entry into a country legally, documents removed, requested asylum to UNHCR). The existence of illegal immigrants in the territory of Indonesia has so far been increasing in number. The regulation of what illegal immigrants are in Law.

6 of 2011 is not yet clear the definition, especially if it happens in real life. This led to confusion in the circle of society and even immigration officials. Criminal The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues Between Countries In The Perspective Of Comparative Law " 153 law policies against illegal immigrants are contained in article 270 (1) and (2) of the Criminal Code (KUHP), as in the formulation of word "whoever" indicates that someone is making a false or misleading passport or replacement letter." The kinds criminal sanctions in Article 270 paragraph (1) and (2) of the KUHP are the same, namely imprisonment.

The imprisonment is the principal penalty, which is a punishment that must be imposed by the judge. The imprisonment, originally planned solely for crimes of dolus, is a deliberate crime. When discussing the plan of the Law, there is no certain limitation between intentional and negligence.

That is why the imprisonment is also determined as an alternative to the criminal sanction of culpa crimes, the crimes committed due to negligence.⁹ The length or magnitude of the criminal sanction is two years and eight months - imprisonment. The formulation of criminal sanctions in Article 270 paragraph (1) and (2) of the KUHP is single, so that the judge can only impose a criminal sanction namely imprisonment of two years and eight months.

Article 113 of Law 6, 2011 on Immigration is related to Illegal Immigration crime includes: "Anyone deliberately entering or leaving the territory of Indonesia who is not inspected by the Immigration official at the Immigration checkpoint referred to in Article 9 paragraph (1) shall be subject to a maximum imprisonment of 1 (one) year and/ or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah). How to formulate criminal sanctions in article 113 of Law No.

6 of 2011 on Immigration is cumulative - alternative, since there is a word 9 Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, (Yogyakarta: Genta Publishing, 2010), p. 18. *The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues Between Countries In The Perspective Of Comparative Law "* 154 "and/or" in the formulation of sanctions in this article.

This may provide the judge with flexibility to choose the right criminals for Illegal Immigrants. Meanwhile the efforts to handle the law enforcement towards the illegal migrant are: 1. Immigration Control; immigration control not only when they enter and exit from Indonesian territory, but also during their stay in the territory of Indonesia including its activities.

Oversight is an activity that determines what is being held ie evaluates the organization and when it is necessary to take corrective action so that it takes place in accordance with the plan. 10 Immigration control should be implemented in an integrated manner and coordinated well so as to avoid the occurrence of undue action against foreigners.

Excessive action and disregarding international customs prevailing in inter-state practice may lead to protests and may be viewed as unfriendly act against the country of origin of foreign nationality. 2. Immigration measures; This immigration action shall be carried out as the implementation of supervisory policy in the field of immigration to foreigners residing in the territory of the Republic of Indonesia conducting activities that are contrary to applicable laws of law.

PREVENTION AND PROTECTION In accordance to to the provisions of the Immigration Law, the meaning of prevention is a temporary prohibition against certain persons to leave the country from the territory of Indonesia for certain reasons. While protection is a 10 Maskan., *Pengantar Management*, Politeknik Unibraw, Malang, 1997, p. 44.

The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder

Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 155 temporary prohibition on certain people to enter the territory **of Indonesia based on** certain reasons.

The implementation of prevention and protection is the authority of **the Ministry of Law and Human Rights** issued through **the Directorate General of** Immigration. The rules of prevention and protection in the Immigration Law, especially against foreigners, are **in accordance with the** policy of immigration in which the principles of selective policy are based on selective principles.

Based on this principles, only foreigners that are able to give **the welfare of the people, nation, and state of Indonesia. Not endanger the security and order of Inndonesia, and are not hostile towards the people and the Unitary State of Indonesia based on Pancasila and the 1945** Constitution. Foreigners with certain reasons such as hostility toward the people and **the Republic of Indonesia** for a while can be denied to enter into the territory of Indonesia.

This is also applied to citizens who for some reason also can be prevented to go outside Indonesia in a certain period. Based on the above description it can be seen that the criminal policy in law enforcement against illegal migrants is a criminal act regulated by the law in article 113 of Law 6, 2011 on Immigration. This law has arranged the types that include immigration crime imposed on immigration violation.

The efforts of law enforcement against immigration crimes committed by foreigners are regulated in the Immigration Law clearly and expressly. Including the process of monitoring foreigners who come out and enter and perform activities **in the territory of Indonesia. The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues Between Countries In The** Perspective Of Comparative Law " 156 LEGAL PROTECTION OF ILLEGAL MIGRANTS AND HUMAN RIGHT Human Right is the rights that had belonged to someone since he was in the womb. Human Right was applied universally.

In relation, the human right we know today is something very different from the previous rights, enshrined. for example as in **the American Declaration of Independence or the French** Declaration. Human right referred to now is a set of rights developed by the United Nations (UN) since **the end of World War II** that did not have the various limitations of the Union. As a consequence, countries could not be excused themselves for not protecting human right of their citizens.

In other words, as long as concerning the question of the human right of every country, with no exception, on a certain level have a responsibility, especially the fulfillment of the human right related to individuals who are in jurisdiction, including foreigners. Therefore, on a certain level, it would not be right to equate between the human right with the rights that belong to citizens.

Human right belongs to anyone, as long as he could be called as a man. There are seven main appearances of the existence of human right now:11 first, human right has become the main agenda in international relations..Second, the state has been obliged to carry out human right norms through international legal instruments concerning human right which have been mutually agreed.

Here, the establishment of institutional arrangements for addressing human right, both in terms of empowerment or solutions regarding human right issues, were 11 Awaludin Hamid, HAM Politik,Hukum dan Kemunafikan Internasional, PT. Kompas Media Nusantara, Jakarta, 2012, p. 7-8. **The Joint International Conference** & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The Perspective Of Comparative Law** " 157 conducted in a big way.

These were carried out not only at international level but also nationally. Third, the individual has to have the legal status to be protected from all forms of violation of human rights. Fourth, the concept of state sovereignty by human right penetration.

Fifth, the primary actor in the promotion and enforcement of human rights, is no longer the monopoly of the state, but also nonstate actor, even multinational companies, have already participated in this agenda. Sixth, individual that has influence and charisma as well as strong leadership and commitment, join the deciding promotion and enforcement of human rights.

Seventh, there has been a change of perception and approach regarding human rights. Human rights in fact consists of two of the most fundamental of fundamental rights, the rights of equality and rights is freedom.From these two fundamental rights this is the birth of other rights, or without both of these fundamental rights, human rights more difficult will be enforced.Given the importance of the internalization process of understanding is so human rights for every person that live together with other people, then a historical approach, ranging from human rights to familiar with the development of the current note by any person to affirm the existence of human rights itself with the rights of others, and the issue of human right is no longer emphasized in the purely legal aspects, but all aspects of life is associated with human rights.

Therefore, now that public policies in various countries carried out by countries, consideration of choices about human right always attached. The same is done in the private sector. **The Joint International Conference** & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 158 Indonesia including State which is not a participant of the 1951 Convention and the 1967 Protocol and the regulations prevailing in Indonesia does not yet exist that specifically highlights the problem of illegal immigrants. Nevertheless, the Government of Indonesia could not hand off against problems of refugees residing **in the territory of** Indonesia.

Furthermore, Indonesia is an active member of the Union of Nations (UN) Indonesia has the responsibility and the law in upholding the values of human rights (human rights) is good for the citizens of the nation of Indonesia or other countries. The thing we can see from the Constitution **of the Republic of Indonesia**, 1945 (1945 Indonesia Constitution), the second principle of Pancasila which reads "just and civilized humanity" and the 4th paragraph preamble RI 1945 along with the changes and also the law of the Republic Indonesia No.

39 year 1999 about human right was clear **that the Government of the Republic of Indonesia** gives appreciation towards the protection, enforcement, compliance and promotion of human rights. ¹² In the present, displacement of the population from one place to another is an ordinary thing. Technology services that support and adequate transportation access **as well as the** existence of individual interests that underlie the shift that's going on.

Even the geographical boundaries of a country sometimes feels like nothing. Right now, the world seemed to be one and state boundaries seems to just be on stories lullabies. One example of displacement it is immigration. ¹³ Immigration means the transfer of people from one country to another, in which ¹² Direktur HAM dan Kemanusiaan, 2010, Naskah Akademik Rancangan Undang-Undang Pengesahan Konvensi Pengungsi, (Jakarta: Direktorat Kerjasama HAM Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia), p. 12. ¹³ Rachmat, Dadang. 1996.

Biduk Kebangsaan di Tengah Arus Globalisasi. Citra Haji Masagung: Jakarta, p. 29. **The Joint International Conference** & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 159 he is not a citizen. Immigration refers to the displacement to settle permanently done by

someone. And someone who does immigration referred to immigrants.

Immigrants themselves when entering **the territory of a** state must be a lawful and must have valid documents to his identity. If not, then it will be treated as illegal immigrants. Every human being on this earth must have human right that has been their since they bring in to engender. Human right is right that rightfully in may by every individual regardless of where they are located.

However, each individual must also meet the duties and obligations before demanding their rights. No exception for those migrants coming into Indonesia. Although it is actually they had broken the law in Indonesia, with the entry into the territory of Indonesia illegally and without a complete document. In fact, many of the illegal immigrants were living and had settled in various parts of Indonesia. In fact, illegal immigrants are there in Indonesia are not only those who enter illegally to settle here or indeed stay long here but had no documents on them. Settlement of the problem of illegal immigrants **in the territory of** Indonesia, the more often the case.

The influx of illegal immigrants into the territory of Indonesia that the number is likely to rise, can cause disruption of social life, politics, security, and order of the community. Do not close the possibility they were infiltrated by the activities of international terrorism, people smuggling, and human trafficking or other criminal activities.

To prevent the occurrence of negative things that threaten the sovereignty of the country, then the handling of illegal imigrai this should be done with comprehensive basic policy **The Joint International Conference** & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 160 based selective (selective policy principle) through security (maximum security) in each of the border regions of the country Indonesia.

However, the application of the law to reject and issuing illegal immigrants should also consider human rights aspects, such as what has been mandated in the 1945 Constitution and instruments of international law which had already been ratified by the Government of Indonesia. Indonesia is a country which ratified the Convention on Civil and Political Rights.

That ended with the birth of Act 12, the Year of 2005 which is an endorsement of the Convention. Article 12 paragraph (2) of the Act 12 the Year of 2005 states that: "every person is free to leave any country including his country." Article 1 paragraph (9) of Act.

6, the year of 2011 about immigration mentioned regarding the conditions for foreigners that the stranger is a person who is not a citizen of Indonesia. In the Immigration Act that a refugee or asylum seekers refer to the article that they are still included in the public that is called and synchronised as foreigners. That is what led to Indonesia has still not ratified the Refugee Convention of 1951 because there was still an instrument of national laws governing illegal immigrants.

In the Regulations the Director General of Immigration, IMI-1489. The year of 2010 at 08 UM mentioned in article 1 to article 6 on handlers of refugees and searchers alike. Articles include: **article 1 in this** rule are: (1) the illegal immigrant is an alien who entered and or in Indonesia is not **in accordance with the** legislation.(2) the United Nation High Commissioner for Refugees that UNHCR said as based in Indonesia is the United Nations High Commission for **The Joint International Conference** & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 161 refugees which provides protection and assistance to refugees and asylum seekers based on the Memorandum of Understanding with the Government **of the Republic of Indonesia**. Article 2 (1) illegal immigrants are currently known to be in Indonesia, the subject of immigration.(2) **in the case of** illegal immigrants as referred to.

Paragraph (1) states the desire to seek asylum and/or because certain trays cannot be imposed Jewish, coordinated with international organizations dealing with problems of refugees or the UNHCR for the determination of its status. Article 6 "everything related to housing and living expenses of illegal immigrants during the process or are under the protection of UNHCR, not to be a dependent load/responsibility of immigration office, the Regional Office of the Ministry **of Justice and Human** Rights, or the Directorate General Immigration ".

Based on the provisions of the above law, it was clear that Indonesia could not be off hand in handling illegal imigrant. And the Government of Indonesia also could not resist the presence of the illegal imigrants. This is in the casue of Indonesia is one of the countries that ratified the Convention on Civil and Political Rights and against Torture and other Cruel Treatment, in Human, or Degrading human dignity. The second Convention is a Convention where the principle of Non-refoulment into its foundations.

The Principle is an aspect of the refugee law forbidding the State to expel or return a person to his country where life and freedom would be threatened. The principle is a basic aspect of the refugee law and has been developed into a norm of jus cogens and the custom of international law so that this principle should still apply in a country

where refugees seek shelter, even though the country is not a country ratified the Convention 1951.

The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The** Perspective Of Comparative Law " 162 The mechanism of handling illegal imigrants in Indonesia depends on how we view the refugees and from the standpoint. So far the problem of illegal immigrants in Indonesia is only vived from the view point of immigration.

The problems of refugees in Indonesia have not seen from the point of view of human rights. Refugees and asylum seekers position still equated with immigrants. whereas the definition between refugees, asylum seekers and immigrants are different each other. .Although illegal imigrants clearly are violating the existence in Indonesia, but they also have rights to be considered by the Government of Indonesia.

The Government should not give direct punishment or directly deport the illegal immigrants. The Government also needs considering survival migrants and certainly considering their birth right. In Indonesia handling illegal immigrants is indeed highly regarding **to the human rights** as the proof that illegal immigrants caught on well treatment.

They are impressed with the taste for the treatment of parties of the country. Compared to other countries, in handling illegal immigrants, indeed Indonesia is the most superior. CONCLUSION 1. The policy of criminal law in fact contains the policy of the state in regulating and limiting the powers of the authority, also the power of the public in general to act and to behave **as well as the** sovereign power or authority in running the task to make sure that the community obey the rules. 2.

The existence of policy formulation in setting an act which will be formulated could lead to a renewal of criminal law to cope with the problem of immigrants in the context of illegal human smuggling handling in the future. **The Joint International Conference & Call for Paper: Indonesia-Malaysia 2017 The Islamic University of Kalimantan-The National University of Malaysia " Cross-Boarder Migration And Security Issues **Between Countries In The**** Perspective Of Comparative Law " 163 3.

The types of criminal sanction in Article 270 paragraphs (1) and (2) of the Indonesian Criminal Code is the same, namely imprisonment. Such as in section 113 of the Immigration Act 6, the year of 2011 related to the criminals among them is: "any person who deliberately enters or exits the territory of Indonesia without inspection by

Immigration officials as referred to article 9 paragraph (1) is convicted with imprisonment of not longer than 1 (one) year and/or criminal fines at most Rp 100,000,000.00 (one hundred million rupiah). 4. Indonesia is not a member of the 1951 Convention dan 1967 Protocle.

No Indonesia regulations are focusing on terms of Illegal migrants. This does not mean that the Indonesia government is avoiding migrant problems in Indonesia territory. As a member of UNO, Indonesia is responsible for the istablishment of human right not only for Indonesia citizens, but also for other country citizens as stated in the Indonesia Constitution of 1945. REFERENCES Ade Maman Suherman, 2004, Pengantar Perbandingan Sistem Hukum, Jakarta: Raja Grafindo Persada.

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