

# Handling Human Smuggling, Refugee, and Asylum Seeker in Indonesia

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**Abstract:** *This study aimed to know the government's attempt in overcoming human smuggling and asylum seeker (P2MP2S) in Indonesia. The methodology that is used is descriptive qualitative methodology with normative approach to analyze the primary and secondary data. The result showed that there was an enhancement of human smuggling in Indonesia, especially the illegal immigrants. The government had tried three attempts to handle the number of human smuggling in Indonesia, those are: preventive attempt is a direct action to stop the illegal immigrants living in Indonesia by doing deportation, detention, and extradition, repressive attempt is suppressing the illegal immigrants through action and partnership attempt is the coordination between Indonesia with United Nations High Commissioner for Refugees (UNHCR) and International Organization of Migration (IOM) along with related party. However, the attempts in handling the smugglers were still not working optimally, yet, even though the agency had already done their task and authority. Therefore, the handling towards this problem need to be coordinated and pushed more in order to make it more intensive.*

**Keywords:** illegal immigrant, state sovereignty conflict, human smuggling, UNHCR, IOM

## 1. Introduction

In 2000, when the civil war in South Asia happened, Indonesia was becoming the transit place and also the destination place for illegal immigrants. The illegal immigrants were organized by the International and national syndicate. Actually, their main destination was Australia since they can reach the Christmas Island—a country that willing to help the refugee and asylum seeker through Australia. In 2013, the number of the illegal immigrants in Indonesia was increasing until 12%. If the numbers keep increasing, automatically it would affects the political, social, economy, and security aspects, and also the job opportunity will decrease in Indonesia [1].

The enhancement of illegal immigrants in Indonesia occurred because there was a chaos in some countries, such as Iraq, Iran, Afghanistan, Ceylon, Pakistan, and Myanmar that lead to a big migration. People started to find a safety place to avoid the war and conflict in their origin country [2]. Human smuggling, especially the illegal immigrant, happened because of the war, the economy factor, and the political conflict. A country that could not provide the job opportunity for its citizens after the war or conflict would cause a big number of unemployment. Those people who became unemployed would choose to migrate to other countries in order to get a job for their better life. However, the human smuggling syndicate used this opportunity to get private benefits. With their intrigue, they brought the immigrant to Australia through Indonesian ship crew who was willing to bring the illegal immigrant with all the risks to Australia due to the economic problem.

Indonesia also had experience of the entrance of illegal refugee or known as 'boat people' from Vietnam in 1976 until 1996 [3]. There were about 250.000 refugee entered and lived in Gelang Tanjung Pinang Island. Normally, the migration happened because of the civil war in their origin country that forced them to move out and look for safety place to other counties, including Indonesia. They came to

Indonesia for transit, before they continued to Australia as their main destination. Indonesia was known as a transit state, then. But, the term of transit state should be reviewed again, since there were many of them used Indonesia as their last destination place.

It became a serious thing, not only in the field of social and culture, but also in the field of politic, security, economy and International relation. Some attempts had been done to handle the refugee case, such as the meeting of Bali process, ECOSOC (Economic and Social Council) in some countries that initiated by the world institution of UNHCR (United Nation High Commissioner for Refugee), and IOM (International Organization of Migration) that had purpose to protect, help, and accompany the process of moving the refugee to the new place based on the PBB request [4].

To sum up, this study discussed about the government's attempts in overcoming the problem of human smuggling, refugee, and asylum seeker in Indonesia. Moreover, this study also examined about the obstacles that happen while handling the human smuggling, refugee, and asylum seeker in Indonesia.

## 2. Literature Review

### 2.1 Smuggling

Smuggling is a term for an individual or a group of individual who moves people across the country to another country in unofficial way or disobeying the law regulation in case to get the benefit [5]. Generally, human smuggling occurs by the agreement of the person who wants to be smuggled with various reasons behind it. Meanwhile, illegal immigration is defined as the attempt to enter a region without permission. Illegal immigrant is an individual or a group of individual who settle in a region more than the limitation of the residence permit or an individual or a group of individual who did not fulfill the requirements to live in a region [6]. The deputy assistance for handling transnational

crime and outside crime of Coordinating Minister of Political, Legal, and Security Affairs, Brigadier General, Chairul Anwar said that the government had the duty to do the Presidential Regulation 125/2016 about the handling of international refugee. Anwar underlined three important things, “there are three things need to be noticed; the effectiveness of handling and field coordination, respecting the Human’s Right, and fulfilling the surveillance aspect and state security toward foreign.”, said Anwar in hotel Aryaduta, Gambir, Jakarta Pusat, Thursday 09/03/2017 [7].

He reputed that the government had duty to respect and fulfill the basic right and fundamental freedom of the refugees and asylum seekers. Besides, the government should not allow to deport the asylum seekers to the place that will endanger their freedom. “While for the right of a refugee’s new born child and the right of children refugee will be discussed with the International Ministry. There are many things that have not been understood by regional society about the rights that should be given to the refugees.” Anwar continues. “Hence, the problem regarding the Presidential Regulation must be socialized sooner in the middle of the year because we want to operate the regulation to overcome the refuge problem faced by the regional society.” He added [7].

**2.2 Immigrant**

The definition of immigrant according to The American Heritage is people who left a country to settle permanently in other country. While according to Oxford Dictionary of Law, immigrant refers to the act of leaving the origin country and move to another country with the intention of living there permanently.

The definition of immigrant above showed that immigration is done because there is a purpose or attempt to live permanently in the destination country. In general, immigrant is an individual or a group of individual who moves from the origin country to another country with certain purpose that push the individual to migrate and settle in the destination area. Immigrant is divided into two; legal immigrant and illegal immigrant [6]. Illegal immigrant is defined as the attempt of an individual or a group of individual who enters a region without permission. Further, it is also defined as the attempt to live in a region but exceed the limit of the residence permit. Therefore, it can be concluded that legal immigrant is a term for people who immigrate with valid travel document, while illegal immigrant is a term for people who immigrate with invalid travel document or with a valid travel document but the residence permit has already expired. Here are the data of illegal immigrant in Indonesia:

**Table 1:** Illegal Immigrant in Indonesia on January – October 2010

Illegal Immigrant in Indonesia January – October 2010 (325 people)				
No	Date	Location	Total	Nationality
1.	28 <sup>th</sup> , Jan 2010	TG. Nangka Sulawesi Tenggara Waterlogged Area	39 people	Afghanistan

2.	28 <sup>th</sup> , Jan 2010	Mania Sabu Barat Beach, NTT	57 people	Afghanistan, Turkey, Iran, Iraq
3.	19 <sup>th</sup> , Feb 2010	PT. Batam Bahari Khatulistiwa, Kepri	1 people	
4.	5 <sup>th</sup> , April 2010	Polda Metro Waterlogged Area	36 people	Afghanistan
5.	17 <sup>th</sup> , Aug 2010	Saung Jangkung Pandeglang Villa	58 people	Afghanistan
6.	19-20 <sup>th</sup> , Oct 2010	TG. Waton P. Panaitan Waterlogged Area	67 people	Ceylon
7.	20 <sup>th</sup> Oct 2010	TG. Parat P. Panaitan	67 people	Ceylon

**Table 2:** Illegal Immigrant in Indonesia on January – November 2011

Illegal Immigrant in Indonesia January – November 2011 (759 people)				
No.	Date	Location	Total	Nationality
1.	6 <sup>th</sup> , Jan 2011	Mayou Timur Waterlogged Area, Rote, NTT	7 people	Afghanistan
2.	15 <sup>th</sup> , Jan 2011	Peudada Bireu Waterlogged Area, Aceh	129 people	Burma
3.	19 <sup>th</sup> , Jan 2011	Kubu Bali Waterlogged Area	50 people	
4.	17 <sup>th</sup> , Feb 2011	DS. Pesangsangan Sumenep, Madura	47 people	Iraq, Iran
5.	22 <sup>nd</sup> , March 2011	Watu Karang, Pringkuku, Pacitan	16 people	Iran
6.	4 <sup>th</sup> , April 2011	P. Indaorote Barat, NTT	142 people	Afghanistan, Iran, Kuwait, Syria
7.	31 <sup>th</sup> , May 2011	PEL. Neph Sampang, Madura	43 people	Afghanistan
8.	22 <sup>nd</sup> , May 2011	P. Panaitan Samudra Hindia, Banten	101 people	Afghanistan, Iraq, Iran, Pakistan
9.	22 <sup>nd</sup> , May 2011	TG. Lesung Waterlogged Area, Banten	101 people	Iran, Afghanistan, Pakistan
10.	9 <sup>th</sup> , July 2011	P. Galang Baru West Waterlogged Area, Kepri	87 people	Ceylon
11.	18 <sup>th</sup> , Oct 2011	Baron Beach, Kemadang Tanjung Sari	17 people	Afghanistan
12.	1 <sup>st</sup> , Nov 2011	Kali Pucang Waterlogged Area, Ciamis	11 people	Ceylon
13.	17 <sup>th</sup> , Nov 2011	TG. Lesung Waterlogged Area, Banten	59 people	Iraq, Iran, Syria

**Table 3:** Illegal Immigrant in Indonesia on January – February 2012

Illegal Immigrant in Indonesia January – February 2012 (224 people)				
No	Date	Location	Total	Nationality
1.	4 <sup>th</sup> , Jan 2012	Cipatujah Waterlogged Area, Tasikmalaya	50 people	Middle East
2.	11 <sup>th</sup> , Jan 2012	KP. Loji, Loji Village, Simpenan, Sukabumi	72 people	Iran, Afghanistan

3.	27 <sup>th</sup> , Jan 2012	Dumai Waterlogged Area	18 people	Afghanistan, Pakistan
4.	23 <sup>th</sup> , Feb 2012	Mawas Srigading Saden Bantul Beach	34 people	Afghanistan, Iraq, Pakistan
5.	27 <sup>th</sup> , Feb 2012	Departure Gate of Hangnadam Nongso Batam Airport	11 people	Ceylon
6.		Batu Nampar, NTB	33 people	Iraq, Palestine
7.	9 <sup>th</sup> Feb 2012	Silau TG River, Balai North Sumatera	6 people	Afghanistan

**Table 4:** Illegal Immigrant in Indonesia on April 2012

Illegal Immigrant in Indonesia April 2012				
No.	Date	Location	Total	Nationality
1.	6 <sup>th</sup> April 2012	Bakauheni, Lampung	5 people	Afghanistan
2.	8 <sup>th</sup> April 2012	Merak	120 people	Afghanistan
3.	10 <sup>th</sup> April 2012	Karawang	7 people	Iran
4.	13 <sup>th</sup> April 2012	Batam	4 people	Afghanistan
5.	14 <sup>th</sup> April 2012	Big Sumbawa	34 people	Somalia, Ethiopia
6.	15 <sup>th</sup> April 2012	East Rote	4 people	Egypt
7.	16 <sup>th</sup> April 2012	Jayapura	1 people	Sudan
8.	17 <sup>th</sup> , April 2012	Bakauheni	10 people	Myanmar
9.	19 <sup>th</sup> , April 2012	Buton	57 people	Myanmar
10.	21 <sup>st</sup> , April 2012	Malang	68 people	Afghanistan, Sudan
11.	23 <sup>th</sup> , April 2012	Lombok	33 people	Palestine, Iraq
12.	25 <sup>th</sup> , April 2012	Jambi	12 people	Afghanistan, Pakistan
13.	27 <sup>th</sup> , April 2012	Banten	28 people	Iraq, Iran
14.	30 <sup>th</sup> , April 2012	Dumai	5 people	Afghanistan

**Table 5:** Voluntary Repatriation until April 2012

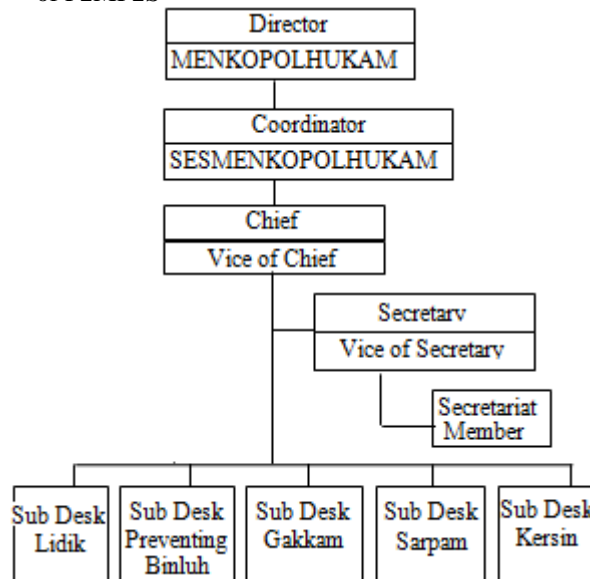
Voluntary Repatriation (AVR) Assisted Voluntary Return and Reintegration until April 2012		
No.	Country	Total
1.	Afghanistan	19 people
2.	Iran	14 people
3.	Iraq	12 people
4.	Ceylon	15 people
5.	Pakistan	5 people
Total		65 people

The last data from the Coordinating Minister of Political, Legal, and Security Affairs showed that there were 14.425 illegal immigrants in Indonesia. The Presidential Regulation Number. 125/2016 about the handling of International refugee was needed to examine the case. “Based on the data of UNHCR, the immigrants and refugees, who enter here, were 14.425 people, per 31<sup>th</sup>, January 2017. Those, consist of 8.039 refugees and 6.386 asylum seekers. The Presidential Regulation is important.” said Chairul Anwar [7]. The refugee, then, was spreading across Indonesia. There were 2.177 people live in *Rudenim* (Immigration Detention House), 2.030 people in *Kanim* (Immigration Office), 4.225 in community house, and 5.993 were independent immigrants. “While the independent immigrants are hard to be detected, they do not have a settle place, and they move around, and it can be a problem. In Puncak, Bogor, there are 2.500 immigrants and Bogor Regent has already asked for help. It is worried that it will affect the

local and trigger criminal action.” he said. The number of *Rudenim* (Immigration Detention House) in Indonesia was not comparable to the number of refugees and it arouse a new problem. “In Indonesia, there are 13 *Rudenim*, and 2.177 people spread to the *Rudenim*. But only one *Rudenim* in Jayapura which has adequate capacity. However, Jayapura does not want to accept refugee from other *Rudenim* region,” he said [7].

**2.3 The Function Desk of P2MP2S**

- a) Inventorying the problem
- b) Formulating the policy and coordinating the attempt to handle human smuggling, refugee, and asylum seeker by preventing, executing, and enforcing the law
- c) Monitoring or Evaluating the execution of P2MP2S
- d) Developing the partnership with local, national, and international ministry.
- e) Reporting the execution result of P2MP2S, also
- f) Arranging the organization structure and job for each part of P2MP2S



**Figure 1:** P2MP2S Function Desk

Sub Desk Job	
Sub Desk Lidik	Monitoring and coordinating the intelligence field in handling the human smuggling and illegal immigrant
Sub Desk Preventing Binluh	Monitoring and coordinating the prevention, evaluation, and socialization field in handling the human smuggling and illegal immigrant
Sub Desk Gakkam	Monitoring and coordinating the Law Enforcement in handling the human smuggling and illegal immigrant
Sub Desk Sarpam	Monitoring and coordinating the security and protection in handling the human smuggling and illegal immigrant
Sub Desk Kersin	Monitoring and coordinating the international relationship in handling the human smuggling and illegal immigrant

With the priority target on:

- 1) Attempting to minimize the illegal immigrants who exit and enter to Indonesia.

- 2) Establishing the Operational Procedure Standard (SOP) in handling the illegal immigrant, refugee, and asylum seeker.
- 3) Implementing the coordination among three countries (three lateral); Indonesia, Malaysia, and Australia.
- 4) Advancing the resettlement decision
- 5) Concepting the additional building of Rudenim (Immigrant Detention House)
- 6) Advancing the returning process of 26 Indonesian citizens in underage children status from Australia to Indonesia

### 3. Methodology

This study used descriptive qualitative methodology through normative approach. Normative approach is used to studying and evaluating the variety of law principals and norms related to the state sovereignty and the illegal immigrants that obtained from library and law regulation. It is also used both primary and secondary data. The primary data is gained from the Indonesian Regulation No. 6/2011 about Immigration, Indonesian Regulation No. 15/2009 about the ratification of protocol in opposing the human smuggling and Coordinating Minister of Political, Legal, and Security Affairs No. Kep-23/SES/POL HUKAM/3/2012 about handling desk of human smuggling, refugee, and asylum seeker. Meanwhile, the secondary data is obtained from the interview with Mr. Chairul Anwar as the Coordinating Minister of Political, Legal, and Security Affairs staff.

### 4. Result and Discussion

#### 4.1 The Function Desk of P2MP2S

In handling the illegal immigrants, Indonesian government together with IOM and UNHCR had done some attempts which unfortunately were not maximal, yet. UNHCR could not always give solution and issued the refugee status letter carelessly. Meanwhile, IOM cannot help the illegal immigrants who had no refugee status to return to their origin.

Australia along with European countries (France, Italy, England, Sweden, German, Greek, Swiss, Norway, and Holland), United States of America, and Canada were becoming the destination country for illegal immigrants. The existence of UNHCR in Jakarta has made a lot of illegal immigrants came to Indonesia in order to get the right of asylum and the 'refugee' status. However, if UNHCR refused to give the 'refugee' status, then Indonesia should returned the immigrants with own personal charge [8].

The developed countries had a pull factor to attract the migrants to come to their country by guarantee them a safety and prosperity life. The developed countries also accepted migrants from developing countries because they wanted to get low salary for 3D job – Dirty, Dangerous, and Demanding, that no longer done by the developed citizens.

Another technical that found often were:

- 1) The coordination between instance and government institution in handling human smuggling, refugee, and asylum seeker was not worked optimally, yet.
- 2) The lack of facilities and infrastructures in detecting the traffic of human smuggling, refugee, and asylum seeker.
- 3) The insufficient ability of human resources in handling human smuggling, refugee, and asylum seeker.
- 4) The lack of budget in handling the case of human smuggling, refugee, and asylum seeker.
- 5) The feeble control in sea, land, and air plane toward the perpetrator of human smuggling, refugee, and asylum seeker.
- 6) The origin country of the illegal immigrants did not have attention toward its citizens if they were being chased in Indonesia.
- 7) The long process of 'immigrant' status determination made many of them frustrated and felt uncomfortable living in *Rudenim*.
- 8) The limit of *Rudenim* and shelter capacity.
- 9) The permission from regional government to get the new shelter was hard to get.
- 10) The location of shelter had impact on local malevolence.
- 11) The interception toward illegal exit was more dominant than entry point.
- 12) There was no law regulation similar to Presidential Decree.

In the case of illegal immigrants in Indonesia, there were some operandi modus which was often done by the illegal immigrants in doing criminality, as like;

- 1) Depart from origin country by using boat and plane to gather in departure point
- 2) The misappropriation of Visa
- 3) With or without passport
- 4) Exploit local sailor to sail to Australia
- 5) Give reward to the wicked officer
- 6) Coordinated by a group of smugglers
- 7) Exploit the opportunity of bad weather and careless officer
- 8) Make the destination place as secret

The official entrance as refugee and unofficial entrance through *TPI* (Immigration Checkpoint) [10];

- 1) Encourage the related instance to do the prevention of illegal immigrants permit to enter and exit Indonesia
- 2) Socialization and partnership from the embassy of Indonesian Republic in each illegal immigrant origin countries in order to control the entrance of illegal immigrant to Indonesia.
- 3) Review the visa on arrival policy since it is suspected being abused by the smugglers
- 4) Enhancement on the intelligence service and enforcement operation, and the active role of the citizens together with government institution to give the information regarding the illegal immigrants as a form of territorial resilience.
- 5) Looking for the regional solution through Bali process

#### 4.2 Government Attempt in Handling Human Smuggling, Refugee, and Asylum Seeker

##### 4.2.1 Preventive Attempt

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The preventive attempt was done to increase the control of foreign activities during their stay and activities in Indonesia. It was the attempt to prevent the entrance of illegal immigrant and asylum seeker through direct action, such as deportation, detention, and extradition. The Government policy in having international relationship, such as the ASEAN forum, PBB, and Bali Process, was very important. It was good to overcome the problem of human trafficking and human smuggling. The role of International organization, such as IOM and UNHCR, to handle the illegal immigrant, refugee, and asylum seeker are; first, the border controls policy. It was aimed to border the movement space of illegal immigrants and smuggling agent. Second, the deportation and validation policy in Indonesia. In its implementation, deportation could not be done if there was no refugee status given by UNHCR, therefore, it needed an approval from Indonesian Government regarding the immigrant status. Third, the examination and observation policy concerning with jobs' location by doing raid and strict sanction toward the human smuggling agent. However, there were no specific regulations in handling the human smuggling in Indonesia [9].

#### 4.2.2 Repressive Attempt

The attempts in operating the illegal immigrants in Indonesia by adjusting the articles of criminal law;

- Law Regulation 73/1958 of Criminal Code
- Law Regulation 8/1981 of Criminal Code Procedure
- Law Regulation 9/1992 of Immigration
- Law Regulation 23/2002 of Children's Protection
- Law Regulation 15/2002 of Money Laundering
- Law Regulation 13/2006 of Witness and Victim Protection
- Law Regulation 39/2004 of the Placement and Protection of Indonesian Manpower Overseas
- Law Regulation 21/2007 of the Elimination of Human Trafficking Criminal
- Presidential Regulation No. 30/1994 about the Implementation Procedure of Prevention and Deterrence
- Presidential Regulation No.31/1994 about the
- Presidential Regulation No.32/1994 about Visa,
- Presidential Regulation No.36/1994 about
- Indonesian Regulation of the Minister of Manpower and Transmigration Number Kep.103/MEN/ii/2007. Number Pol: B/306/ii/2007 about the Law Enforcement of Protecting the Manpower

#### 4.2.3 Partnership Attempt

The General Politic Inspector, Bambang Suparno, through hukumonline.com on 6<sup>th</sup>, December 2013 stated that the government had already built a team for handling the illegal immigrant problem. The team were consist of some various Governance Ministry and Institution, such as Coordinating Minister of Political, Legal, and Security Affairs [1].

Indonesian Government also had done the coordination with the United Nations High Commissioner for Refugees (UNHCR) and International Organization of Migration (IOM). Indonesia offered some way out in handling the illegal immigrant's problem, since it was already becoming the international issue. The first was by looking for the source of the problems that made the immigrants came to the

Southeast Asia. The second was the invitation for UNCHR and IOM to collaborate with Indonesia.

The result showed that Indonesian policy through the Law Regulation Number. 6/2011 about immigration, in handling the illegal immigrant's case was still not effective, yet. It was still partial by placing them as the victim. There were no sanctions for them. The state sovereignty principal must be made as a guide in making the illegal immigrant's regulation policy.

There were 514 people of Indonesian citizens who had legal process and in some part of Australia, involved in human smuggling. 272 people were in court process, 170 people had been sentenced, 37 people were in investigation process and 9 people were in the process of returning to the homeland. 34 people claimed as underage children and they were in the process of determining the age limit. If they were proved as underage children, they cannot be processed by law and must be returned back to Indonesia.

Indonesian Government had already done some attempts, together with Australian Government, UNHCR, and IOM, to handle the human smuggling problems, especially the illegal immigrants. Nevertheless, the popularity of illegal immigrants in Indonesia was keep on increasing as written in the data from the Indonesian National Police for the period of 2010, there were 2.188 illegal immigrants came from various countries entered Indonesia. Meanwhile, the data from Directorate General of Immigration, during January until May 2011, there were 659 refugees, 2.180 asylum seekers, and the illegal immigrants who had not registered, yet.

Indonesia had already authorized the protocol ratification based on the Law Regulation Number. 15/2009 which opposed the smuggling from sea, land, and air. But until now, there is still no specific regulation about the criminal abuse of human smuggling, and Indonesia is only use the Immigration Regulation Law Number. 6/2011 Article 120 to punish the smugglers who indicated in the group of illegal immigrants. The regional or national teamwork and agreement must be increased by coordinating the related apparatus, by involving the citizens' potential and the authorized immigration regulation which expected to handle the human smuggling and illegal immigrant in Indonesia.

Look closely to the development of politic in Middle East region and Southeast Asia, also the rejection from Malaysian Government about the presence of illegal immigrants, the entrance of illegal immigrants in Indonesia is estimated still on going, even increasing. The publication of Coordinating Minister of Political, Legal, and Security Affairs' decree Numbner.Kep-23/SES/POLHUKAM/3/2012 about the handling desk of human smuggling, refugee, and asylum seeker, had functions as below:

- a) Coordinating and Synchronizing the job and function of the ministry in handling the human smuggling, refugee, and asylum seeker.
- b) Handling the problem of human smuggling, refugee, and asylum seeker.

- c) Helping the Coordinating Minister of Political, Legal, and Security Affairs in monitoring, synchronizing, and coordinating the policy of preventing and handling the human smuggling, refugee, and asylum seeker [11].

## 5. Conclusion

In conclusion, the problem of human smuggling, especially the illegal immigrant in Indonesia showed an enhancement. It was the consequence of politic condition in Middle East country and Southeast Asia. The preventive, repressive, and partnership attempt had been done by the Indonesian Government to handle the human smuggling and asylum seeker. Meanwhile, the handling of the asylum seeker and refugee by related instance based on the job and authority had already running, but it did not optimal because the handling of P2MP2S was not limited only in the field of instance but also the international institution, like IOM and UNHC, and the other countries.

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