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### Stalemate: Refugees in Indonesia — Presidential Regulation No 125 of 2016

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# STALEMATE: REFUGEES IN INDONESIA — PRESIDENTIAL REGULATION No 125 OF 2016

## ABSTRACT

*This policy paper examines Presidential Regulation (Perpres) No 125 of 2016 on the Treatment of Refugees and Asylum Seekers in Indonesia, signed by President Joko Widodo on 31 December 2016. This long-awaited regulation reiterates Indonesia's long-held position on its responsibilities towards asylum seekers and refugees. Perceiving itself as a transit country only, Indonesia attempts to protect refugees but welcomes them only for terminable period. This policy paper analyses the content of this Presidential Regulation, pointing out its strengths and weaknesses, in order to alert policy-makers to the remaining gaps in the protection of refugees. Although it makes some progress in regard to rescuing refugees in emergency situations, our analysis concludes that the Presidential Regulation still lacks substantial commitment to the effective protection of refugees. Rather than offer any durable solution for asylum seekers and refugees staying on in Indonesia, the current policies create 'permanent temporariness'. Not only are resettlement options in safe third countries shrinking, but voluntary repatriation to their conflict-ridden countries of origin is often not feasible. So long as local integration into the Indonesian society, which the United Nations High Commissioner for Refugees (UNHCR) would like as a third durable solution, is not an option, refugees and asylum seekers will continue to suffer the most in the current stalemate.*

## RESEARCH FOR THIS POLICY PAPER

In 2017, the team of authors observed three *sosialisasi* (information-sharing) events related to Presidential Regulation No 125 of 2016 in Jakarta (one national and the other provincial) and in Makassar, at which officials attending asked questions about its implementation. Following two of the *sosialisasi* events, we interviewed representatives of several ministries and local administrations, and heads of detention centres, to gain a clearer understanding of what they perceived as the main hurdles and challenges to the new Regulation's implementation.

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# STALEMATE: REFUGEES IN INDONESIA — PRESIDENTIAL REGULATION NO 125 OF 2016

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## BACKGROUND

While Indonesia is not a signatory to the 1951 Convention or the 1967 Protocol Relating to the Status of Refugees, it has a long tradition of hosting refugees and asylum seekers within its territory. The reasons for Indonesia's reluctance to become part of the international refugee protection regime reach back to the early days of the Convention and its rather Eurocentric definition of who was entitled of international protection (Peterson, 2015; Jones, 2014).

The United Nations High Commissioner for Refugees (UNHCR) is chronically and globally underfunded and understaffed, and this has negative repercussions for the length of time taken to process asylum applications. Although the 1967 Protocol made the 1951 Refugee Convention more global in its scope, Indonesia deems the political and economic costs of ratification to be too great (Soeprapto, 2004; Riyanto, 2004; Liliansa and Jayadi, 2015). Successive Indonesian governments have also worried that becoming a member of the Refugee Convention might create a pull factor attracting even more asylum seekers (Komar, 2015). Other objections put forward include the fear of a potential increase in the transnational drug trade and of the importation of health risks (Meliala, 2011; Mathew and Harley, 2014).

Last but not least, some Indonesian government representatives, such as Andi Rahmiyanto, Director for International Security and Disarmament in the Indonesian Foreign Ministry, claim that, although Indonesia 'is not yet a signatory of the convention, what we do fulfils [the convention] in principle and in spirit' (Wicaksono and Angelia, 2015). According to this view, Indonesia adheres to basic protection principles (non-refoulement, non-discrimination), collaborates with the UNHCR and, therefore, offers at least temporary protection (Anwar, 2017). For these reasons, it is unlikely that Indonesia will become a party to the Refugee Convention any time soon.-

Quite apart from Indonesia's reluctance to sign the 1951 Refugee Convention, Indonesia is subject to a number of international obligations that are relevant to refugee protection, arising from treaties and other international agreements (Jones, 2014: 251ff). Indonesia has, for example, acceded to a number of human rights treaties, such as the Convention against Torture (CAT), ratified in 1998, the International Covenant on Civil and Political Rights (ICCPR), ratified in 2006, and the Convention on the Rights of

the Child, ratified in 1990, which cover a range of fundamental rights for asylum seekers and refugees (Tan, 2016). An example of a customary international obligation is the principle of non-refoulement, which forbids a country receiving asylum seekers from returning them to a country in which they are likely to be persecuted because of their race, religion, nationality, membership of a particular social group, or political opinion.

Because of its reluctance to formally join the international refugee protection regime, Indonesia has not put in place a comprehensive domestic legal framework and operational infrastructure for protecting refugees and asylum seekers. Since 1979 the UNHCR has carried out refugee status determination in Indonesia and organized the resettlement of those accepted by third countries (UNHCR Indonesia, 2015). Also In 1979, the International Organization for Migration (IOM) began operating in Indonesia (IOM Indonesia, 2013). Under the tripartite Regional Cooperation Agreement (RCA) that IOM and the Australian and Indonesian governments signed in October 2001, IOM provides asylum seekers and refugees in Indonesia with basic accommodation, monthly allowances for food and basic necessities and rudimentary medical care and counselling. IOM provides services for asylum seekers in Indonesia's 13 immigration detention centres and more than 20 quarantine stations (Missbach, 2015: 138ff). IOM does not face any funding difficulties, largely because of the substantial support it receives from the Australian government (Hirsch, 2016).

As well as the international conventions noted above that cover some aspects of refugee protection, there are several domestic Indonesian laws, including constitutional, statutory and customary laws, that mention the right to seek refuge. Article 28G(2) of the Indonesian Constitution, inserted in 1999, embedded the right to asylum in national law for the first time. It states, 'Each person has the right to be free from torture or inhuman and degrading treatment and shall be entitled to obtain political asylum from another country' (Constitution of the Republic of Indonesia 1945). Moreover, during Indonesia's reform period (*Reformasi*), which began with Soeharto's resignation in May 1998, Indonesia implemented several progressive laws that mention the possibility for Indonesia to grant asylum. For example, art 28 of Law No 39 of 1999 on Human Rights states the right to seek and obtain 'political asylum', with an exclusion clause that broadly reflects art 1F of the Refugee Convention (Tan, 2016: 376; see also Soeprapto, 2004).

More importantly, Law No 37 of 1999 on Foreign Relations mentions the right to apply for asylum in Indonesia. Articles 25–27, entitled 'On granting asylum and the issue of refugees', place authority to grant asylum in the President's hands, as advised by the Minister of Foreign Affairs. Law No 37 of 1999 states that asylum is granted in accordance with Indonesian law with due regard to international practice, and that the President will enact a policy on refugees on the recommendation of the Minister of Foreign Affairs. There is no evidence that asylum has ever been granted under this law and, until now, no mechanism has been set up to claim this right. After a 17-year delay, President Joko Widodo signed Presidential Regulation (Perpres) No 125 of 2016 in

December 2016. This Regulation seeks to close the gap created by Law No 37 of 1999.

Presidential Regulation No 125 of 2016 has been many years in the making but lack of political will has repeatedly stalled its progress. The catalyst for change that made the Regulation inevitable was the Andaman Sea crisis of May 2015, when several thousand Rohingyas from Myanmar stranded at sea pleaded for their rescue. Initially Indonesia was reluctant to carry out rescue operations and, in at least one case, the Indonesian navy pushed back one of the boats carrying Rohingyas out to sea after providing them with food and fuel (UNHCR, 2015; Amnesty International, 2015). Following an international outcry, Indonesia allowed the Rohingyas to disembark in its territory and offered temporary shelter on the condition that the international community complete resettlement and repatriation processes within one year (Ministerial Meeting, 2015). The number to benefit from this agreement was capped at 7,000.

It became clear early in this intervention that the deadline for speedy resettlement was unrealistic, given that processing time for asylum seekers exceeded one year and waiting times for resettlement frequently extended to several years; more importantly, resettlement options are seriously limited, due to 'resettlement fatigue' in countries around the globe.

During the Andaman Sea crisis Indonesia reiterated its call for a joint regional approach (Humas Polkam, 2016), demanding, without success, that Australia take on greater responsibility for regional refugees (AsiaOne, 2015).<sup>1</sup> Australia has long focused its attention on the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, chaired jointly by Indonesia and Australia, and its potential to improve prevention of irregular movement rather than any consideration of protecting people caught up in forced migration. Indonesian Foreign Minister, Retno Marsudi was forced to concede that the Bali Process could not address sudden irregular migration movements in the Andaman Sea and the Bay of Bengal (Topsfield, 2016).

The Andaman Sea crisis was a wake-up call for Indonesia. The regional solution for asylum seekers and refugees stranded in Southeast Asia, which Indonesia had for many years sought to promote among its neighbours,<sup>2</sup> was simply not working.

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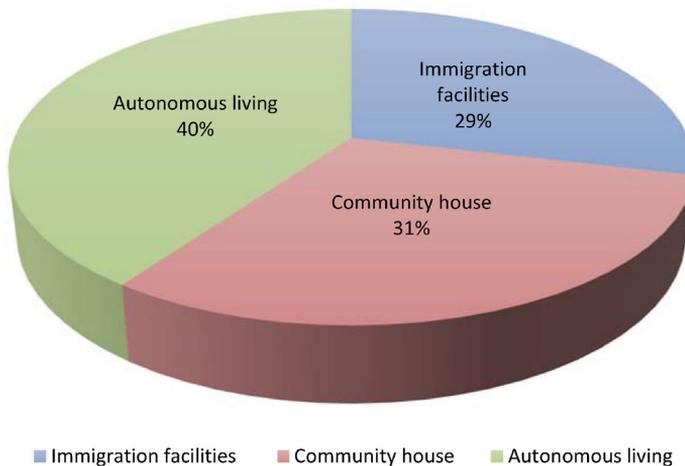
1 Foreign Affairs spokesman Arrmantha Nasir was quoted as saying that countries that have signed the 1951 Refugee Convention, including Australia, 'know their responsibility. They know what they have to do. I think the onus is on them to show their leadership and to show what they have committed to', noting that 'countries who are not parties to the convention are showing real compassion in their efforts to assist on this humanitarian matter.'

2 Indonesia has lobbied for many years in favour of a more regional joint approach to deal with the irregular movement of migrants in the region. On 20 August 2013, in the last days of his presidency, Susilo Bambang Yudhoyono initiated the Jakarta Declaration on Addressing Irregular Movement of Persons, bringing together 13 countries of origin, transit and destination to discuss a joint approach (UNHCR, 2013).

Despite the existence of declarations such as the ASEAN Human Rights Declaration, which recognises every person's right to seek and receive asylum, no country has been prepared to put their words into action. Therefore, although Indonesia continues to adhere to the idea of a regional solution, it realised that it had to start in its own backyard and develop legal instruments and mechanisms to bring about positive change for refugee protection.<sup>3</sup>

Between 2014 and 2016, there was a six per cent increase in asylum seekers entering Indonesian territory and registering with the UNHCR (UNHCR, 2018). In June 2017, there were 14,337 asylum seekers and refugees in Indonesia, from more than 47 countries of origin, but mostly Afghanistan, Somalia and Myanmar. In late 2017, the UNHCR in Jakarta announced that most asylum seekers and refugees currently living in Indonesia cannot expect to be resettled to third countries any time soon (Topsfield, 2017). While many of them remain unable to return to their countries of origin, Indonesia will reluctantly transform from a transit country to a country of containment (or temporary/(semi)-permanent settlement) (Brown and Missbach, 2016). In light of this, it is important to examine the new legislation, Presidential Regulation No 125 of 2016, to see whether it advances refugee protection in Indonesia.

#### Refugees and asylum seekers in Indonesia and their accommodation status, June 2017



Source: Anwar (2017).

- 3 For example, at the 2016 Refugee Day celebration, Lutfi Rauf, Deputy Coordinating Minister for Political, Legal and Security Affairs, stated 'this refugee crisis cannot be solved by one country only, because it is a cross-border issue' that requires the cooperation of countries of origin, transit and resettlement (Humas Polkam, 2016).

## THE MAKING OF THE PRESIDENTIAL REGULATION

The provision of a Presidential Regulation, which was stipulated by Law No 37 of 1999, was not achieved for 17 years. In the meantime, the only policies that covered refugee issues were the Directive of the Director General of Immigration of the Department of Law and Legislation<sup>4</sup> No F-IL.01.10-1297 on Procedures Regarding Aliens Expressing Their Desire to Seek Asylum or Refugee Status (issued 30 September 2002), and Regulation No IMI-1489.UM.08.05 of the Directorate-General of Immigration of the Ministry of Law and Human Rights on the Processing of Illegal Immigrants (issued 17 September 2010). The bottom line of these directives was that the Indonesian government's role remained limited and that asylum seekers be referred to the UNHCR, to process their claims, and to IOM for basic care.

The new Law No 6 of 2011 on Immigration, introduced in May 2011 makes no mention of 'asylum seekers' or 'refugees' at all. Managing asylum seekers' and refugees' applications for protection was not part of this piece of legislation, which, to the contrary, stipulated the arrest of migrants without legal documents and valid visas, and their detention in immigration detention centres for undetermined periods of time. As the number of asylum seekers coming to Indonesia rose, Indonesian law enforcers placed more and more of them in detention centres, which soon became seriously overcrowded (Human Rights Watch, 2013). While there were frequent breakouts, hunger strikes and fatalities inside the detention centres, increasing numbers of asylum seekers and refugees began to plead to be placed in detention in order to avoid homelessness as their private funds ran out (Missbach and McNevin, 2015).

Moreover, cooperation between the Indonesian police responsible for intercepting and arresting undocumented migrants and the Indonesian migration authorities responsible for registration, detention and monitoring them became increasingly tense as their funding and competency levels struggled to meet their responsibilities. The UNHCR also had difficulty processing applications for refugee status and resettling people to safe third countries as their caseloads increased. All these issues put mounting pressure on Indonesia from 2011 onwards, and intra-ministerial preparations for preparing and implementing a Presidential Regulation eventually intensified (Komar, 2015). The main intention of the regulation was to establish a framework to handle refugees in Indonesia (Komar, 2017).

Initiated by the Directorate for Law and Human Rights of the Ministry of Foreign Affairs,

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4 This Department has changed names numerous times. In the Dutch Colonial era, it was the Departemen van Justitie, which on Independence in 1945 became the Departemen Kehakiman (both translating as 'Department of Justice'). From 2001 to 2004, it was known as the Departemen Hukum dan Perundang-undangan (Department of Law and Legislation). Between 2004 and 2009, it was known as the Departemen Hukum dan Hak Asasi Manusia (Department of Law and Human Rights), and in 2009, it became the Kementerian Hukum dan Hak Asasi Manusia (Ministry of Law and Human Rights).

drafting the Presidential Regulation involved other key ministries, such as Internal Affairs and Finance. Before the Presidential Regulation became law, the Directorate-General of Immigration was the vanguard. Responsibility for implementing the Presidential Regulation now rests with the Human Smuggling, Refugees and Asylum Seekers Desk of the Coordinating Ministry for Political, Legal, and Security Affairs (Kemenkopolkham), which coordinates all relevant institutions.

The drafting of the Presidential Regulation proceeded slowly, partly because of the conflicting priorities of the different ministries involved in the process. After four years, at least three different drafts of the Presidential Regulation had been prepared.<sup>5</sup> The first two drafts contained more rights provisions, for example relating to refugee children's access to education (IOM n.d.). The Andaman Sea crisis of May 2015 was the catalyst for the negotiation of the final version of the Presidential Regulation, partly because of Indonesia's failure to carry out timely rescue operations in that crisis, which had a profound influence on the final version of the Presidential Regulation and the way it spelled out the responsibilities of national rescue and security bodies. The final version of the Presidential Regulation has eight chapters containing 45 provisions in total: 1) general provisions; 2) discovery and interception; 3) accommodation; 4) security; 5) supervision; 6) funding; 7) other provisions; and 8) closing provisions.

The most important outcome of the Presidential Regulation is recognition of the duty to rescue refugees stranded in Indonesian waters. In the Presidential Regulation, several national bodies are identified as responsible for maritime rescues, including the Indonesian National Armed Forces, the Indonesia National Police, the Ministry of Transportation, and the Indonesian Coast Guard, in addition to the National Search and Rescue Agency. The Presidential Regulation also places responsibility on individuals who encounter people in an emergency at sea to engage in search and rescue activities.

Another important provision in the Presidential Regulation is clearer delineation of procedures for detention and non-custodial alternatives to detention (community shelters) for asylum seekers and refugees. It states that all asylum seekers intercepted should be taken into the nearest immigration detention centre for identification and registration. If there is no detention centre near the area of interception, they should be taken to the nearest immigration or police office for their documents, national identity and immigration status to be checked, and then accommodated in a temporary shelter. Those already recognised as refugees should be taken to UNHCR for further verification. The Presidential Regulation does not mention any limits on how long refugees are to be detained in a detention centre.

While the Indonesian police remain responsible for all issues related to the security of asylum seekers and refugees, administration and supervision remains in the hands of immigration authorities, including the heads of detention centres (Chapters 3 and 4).

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5 The authors have copies of these three different drafts.

The most important provision, funding for the Presidential Regulation, has the least coverage, with only one paragraph (art 40) in the relevant chapter:

Funding required for refugee treatment comes from: a. state budget revenues and expenditures through related ministries/agencies; and/or b. other sources that are legitimate and non-binding in accordance with the provisions of legislation.

As we explain later, this is probably the Achilles' heel of the Presidential Regulation. The remaining chapters of the Presidential Regulation cover coordination between internal and external institutions, and guidelines for deportations and repatriations.

## KEY PROBLEMS

The Presidential Regulation has a number of shortcomings, of which we can discuss only a few here. Based on our findings, we concentrate on three challenges in particular: lack of alternatives to detention; lack of political will; and, most importantly, lack of funding.

One of the Presidential Regulation's main weaknesses is that it does not acknowledge the existence of independent refugees who are not found stranded on land or at sea. About 6,000 asylum seekers and refugees were living independently in Indonesia in 2017 (Anwar, 2017). They have avoided detention because they could afford to provide for themselves, often renting apartments in Jakarta or rooms and houses in and around Puncak, a mountain holiday resort area outside Jakarta (Church World Service, 2013; Briskman and Fiske, 2016). They face different problems and challenges from those of asylum seekers and refugees in detention and community shelters but the Presidential Regulation ignores them. During *sosialisasi* (information-sharing) events we attended, and in interviews with government officials, some officials expressed the opinion that refugees living autonomously should be housed in government-designated accommodation, but it remains unclear whether the government can or will do so, owing to a shortage of community shelters.

## FINDING ALTERNATIVES TO DETENTION

There seems to be a consensus among the national government agencies that immigration detention facilities should no longer be used for housing refugees and asylum seekers for the long term, as they lack the facilities to cater for the specific needs of refugees and asylum seekers. Detention centres were originally designed to detain immigration offenders awaiting deportation after they had served their sentences. In mid-2017, close to 2,000 asylum seeker and refugees, some of them underage, were languishing in immigration detention centres. Eight of the thirteen detention centres were already overcrowded, and others were approaching full capacity (see chart below). Overcrowding and the prison-like conditions in the detention centres, as well as the arbitrary deprivation of liberty, have been criticised by local human rights

organisations and a concerned international audience, and have given Indonesia a bad reputation (Komnas HAM, 2014, 2015, 2016; Rachmah and Pestalozzi, 2016; UNHCR, 2017). Consequently, the Indonesian government is determined to normalise the function of detention facilities as places where visa overstayers and criminal migrants are detained, and provide alternative shelters for refugees and asylum seekers waiting for durable solutions (Missbach, 2017).

In January 2018, the situation was made more urgent when the press gave coverage to refugees who could no longer afford to live independently and wanted access to immigration detention centres, such as in Kalideres (Jakarta). Because the centres were already over-capacity, they were rejected but began to camp on footpaths in front of the detention centres (Aji, 2018; Pitoko, 2018). Behind their voluntary surrender is the knowledge that only those registered in immigration detention will eventually be placed in community shelters, where all their needs are provided for (Missbach, 2017). In August 2014, IOM provided 42 community shelters for about 2,599 migrants but the capacity of these facilities does not meet current need.

**‘Illegal immigrants’ in immigration detention facilities, 30 June 2017<sup>6</sup>**

No	Municipality	Capacity	Detainees
1	Tanjung Pinang	400	386
2	Medan	120	307
3	Pekanbaru	125	142
4	Jakarta	120	80
5	Semarang	60	84
6	Surabaya	80	49
7	Denpasar	80	80

6 Indonesian data still includes refugees in counts of ‘illegal immigrants’. It is not clear, however, whether the count refers only to refugees and asylum seekers or whether it also includes ordinary immigration offenders.

No	Municipality	Capacity	Detainees
8	Kupang	90	135
9	Pontianak	210	158
10	Balikpapan	150	226
11	Manado	100	161
12	Makassar	80	134
13	Jayapura	80	17
	Total	1695	1959

Source: Anwar (2017).

According to arts 24 and 27 of the Presidential Regulation, recognised refugees and vulnerable asylum seekers (pregnant women, underage, elderly, disabled and sick people) are not to be kept in immigration detention centres at all, but accommodated in designated community shelters. However, the Presidential Regulation lacks a clear timeframe for releasing asylum seekers and refugees from immigration detention centres. Undetermined periods in detention are like arbitrary detention, prohibited by international human rights law. The potential for long periods in detention therefore raises serious concern among observers, exacerbated by the potential for local governments to delay designating community shelters.

In principle, Chapter 3 of the Regulation shows a determination to no longer rely on immigration detention centres for long-term accommodation of refugees. Instead, non-custodial accommodation, such as community shelters, will be provided. To achieve this, the heads of immigration detention centres must coordinate with district and/or municipal governments, which then determine the locations for community shelters.

The Presidential Regulation sets certain criteria for suitable accommodation. Not only must the community shelters be in easy reach of the local authorities (immigration, police) and service providers (hospitals, shopping centres, schools, houses of worship), but they must also meet quality and safety standards to be accepted by IOM, which has so far covered all costs of the shelters. Once the local government has chosen a suitable place for a refugee shelter, an international organisation, such as IOM (although it is not

specifically mentioned in the Presidential Regulation) will operate it, in coordination with the relevant ministries.

The Presidential Regulation makes it clear that local governments are expected to offer unused buildings as shelters for asylum seekers and refugees, but many local governments are reluctant to take on the responsibility of hosting refugees in their area. In the past, local governments, such as in the district of Bogor (Puncak), were forced to do so, as refugees had settled there independently. Bogor local authorities have repeatedly appealed to the national government to relocate refugees living in the Puncak area in response to mounting protests from the local people (Saudale, 2017; Tribune News, 2017).

Finding suitable places for refugee shelters has proven difficult and the IOM has set up a taskforce to scout potential buildings. So far, community shelters have usually been former rundown hotels and boarding houses, which have been renovated and adjusted to meet the IOM standards. Occasionally new community houses have been built for the purpose (IOM, 2014). Although the financial incentives from the IOM to owners of suitable hotels and boarding houses are lucrative, as they can earn much more than they can from accommodating tourists or Indonesian renters, many owners are sceptical.<sup>7</sup> Some became unwilling after experiencing severe physical damage to their properties caused by frustrated boarders; others were confronted by angry neighbours unwilling to tolerate refugees in their vicinity. Their reluctance is symptomatic of an increasingly unfavourable political climate towards refugees in an increasing number of areas in Indonesia.

### LACK OF POLITICAL WILL

Political controversy erupted in Makassar, when, in early September 2017, a video went viral showing the South Sulawesi governor expressing displeasure at the presence of Rohingya refugees in Makassar and asking them to leave (Syadri, 2017). Ironically, the municipal government in Makassar was in the process of devising a plan to evict refugees and asylum seekers from Makassar when a Presidential Regulation *sosialisasi* (awareness-raising event) was about to take place.<sup>8</sup> Although the eviction plan was eventually cancelled, it is clear that it is wishful thinking to expect local governments to play a more active role in handling refugees and asylum seekers. Given the level of regional autonomy introduced in Indonesia in 1999,

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7 During interviews with owners of refugee shelters, we learned that they have to pay large bribes to keep their permits to run shelters, which is another disincentive (interviews by Antje Missbach, 12 January 2018, Makassar).

8 This was stated by a representative of the local immigration office during a *sosialisasi* event on the Refugee Regulation, held for the Regional Government of South Sulawesi in Makassar on 3 September 2017.

Presidential Regulation No 125 of 2016 is bound to be strongly challenged by regional executives and other relevant authorities who may, directly or indirectly, refuse to follow its directives.

The willingness of local governments to accommodate refugees and asylum seekers in their area depends on the local political context. As in many parts of the world, politicians consider the issue of refugees (or immigrants generally) as reducing their chances of winning votes, and they tend to choose options that are in line with popular opinion. It is difficult for local governments to justify the presence of refugees and asylum seekers when they receive frequent complaints from residents, as they did in the Bogor district. In some areas, the situation is exacerbated by the fact that between a quarter and a third of all refugees in Indonesia are Shi'ite Muslims, which does not sit well with the Sunni majority population, as recent incidents have shown.<sup>9</sup> In short, as long as opposition from local people remains strong, it will be politically difficult for any mayor or regent to accommodate refugees in his or her jurisdiction.

Whether local governments can refuse to host refugees and asylum seekers, as mandated by the Presidential Regulation, is not entirely clear. Although they appear in the hierarchy of Indonesian legislation, Presidential Regulations are less binding than national laws (*undang-undang*). They nonetheless still carry substantial gravity.

Under Indonesia's regional autonomy policies, regional governments have broad powers to manage their own affairs and resources (see Law No 23 of 2014 and Law No 9 of 2015), but according to Law No 23 of 2014 on Regional Government, power ultimately rests with the President, and local government is, in theory, the agent of the president in the local jurisdictions. Consequently, local governments must comply with Presidential Regulations, since they are part of body of law that is superior to any regional legal instruments, and, according to Law No 23 of 2014 (art 251), central government can even annul regional laws that are in conflict with Presidential Regulations. In theory, the government can impose sanctions on local governments that fail to implement Presidential Regulations, and even remove a mayor or regent (Law No 23 of 2014, arts 78 and 79). In practice, it is difficult to imagine the central government taking such drastic action against a mayor or regent who fails to implement Presidential Regulation No 125 of 2016, especially on such a politically unattractive issue.

Local government compliance therefore depends on the ways that central government (through its ministries) applies pressure. Our interviews with local stakeholders revealed that, despite several *sosialisasi* events, many local government officials remain ignorant of the Presidential Regulation's provisions and of their responsibilities

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9 In October 2015, for example, a group of refugees under IOM care in Sewon, Bantul were moved to Sleman because local mass organisations (*ormas*) voiced their opposition to the refugees' celebrations of the important Shi'ite festival of Ashura (Apriyadi, 2015; Jakarta Post, 2015).

towards refugees.

## FUNDING

According to Presidential Regulation No 125 of 2016 (art 40), two main funding sources are envisioned for its implementation – domestic and foreign. This includes the national budget allocated through relevant ministries/agencies (*Anggaran Pendapatan dan Belanja Negara*, APBN), and other ‘legal, non-binding’ sources as permitted by the law. Whereas the budget allocation might seem straightforward, in reality, it is a very sensitive issue for several reasons. At the time of our interviews, no government ministries had been able to put anything into their 2017 budgets for implementing the Presidential Regulation, as it was only released in December 2016, and will not really take effect until 2018.

The Presidential Regulation makes it clear that international organisations will provide for the basic needs of the refugees, such as clean water, food, clothing, and health care but not housing. So far, IOM has covered all costs related to housing and provided basic care for asylum seekers and refugees, both inside and outside immigration detention (Hirsch, 2016),<sup>10</sup> but the Presidential Regulation leaves it open for other donors to become involved in covering the costs in the future. Refugees have not been considered an issue of priority by the Indonesian government, so no substantial funding has been made available for them. This leaves Indonesia dependent on external donors, who channel funding through IOM, and thus open to influence from them.

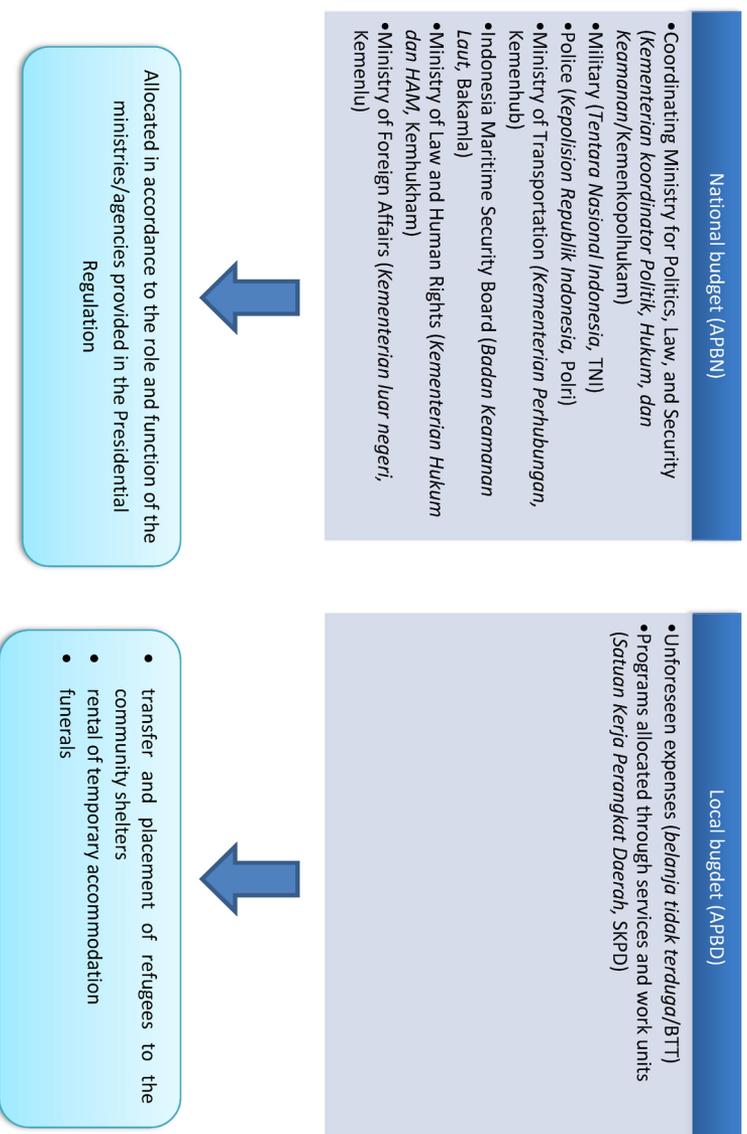
Because under the Presidential Regulation local governments have a greater role in handling refugees, particularly in regard to accommodation, local governments are expected to authorise the use of provincial and municipal/district budgets (*Anggaran Pendapatan dan Belanja Daerah*, APBD) (Putro, 2017). Local governments can make a budget allocation for handling refugees under *Belanja Tidak Terduga* (BTT, unforeseen expenses) and for program expenses allocated through services and work units (*Satuan Kerja Perangkat Daerah*/SKPD) under the governor and mayor/regent.<sup>11</sup> The APBD can be used for transfer and placement of refugees in community shelters and rental of temporary accommodation until a more permanent shelter is available, and even for funerals.

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10 IOM even financed the *sosialisasi* events we attended.

11 Interview with Jimmy Revido, Directorate of Regional Budgets, Ministry of Internal Affairs, 25 July 2017, Jakarta.

## Funding sources for the implementation of the Presidential Regulation



Source: Recreated from a presentation by Ministry of Internal Affairs representative, at a sosialisasi event in Jakarta, 20 July 2017.

The issues of budget allocation are entwined with the political will of local government, discussed earlier. Not only do local governments now have to host refugees in their respective territories but they are also expected to spend a portion of their APBD on handling refugees. During a *sosialisasi* event for the Presidential Regulation that we observed, a number of local government representatives challenged their national counterparts. Their main argument was that the handling of refugees should be the responsibility of central government. The representatives of the national ministries usually dismissed their objections, stating that central government had made the decision and local officials were to implement it, which is hardly a useful response to get local governments on board.

The local politics of budgeting is often a source of conflict in Indonesia. Many interests are at play and local leaders cannot afford to spend money on politically unpopular activities, such as providing for refugees. In a patronage-based democracy like Indonesia, voters and politicians see political support as a reward or payment for services rendered – almost like a business transaction (Palmer, 2010). Therefore, the first priority of any local leader is to repay those who voted for them with policies and resource allocation that favours them. In this transactional context, refugees have no relevance at all. Moreover, the power to approve the APBD also rests with the DPRD (Dewan Perwakilan Rakyat Daerah, the local legislative body), which means that questions about who should be responsible for refugees will only intensify. Between DPRD scrutiny and the lack of political payback for a mayor or regent to fight for it, the odds are slim that the budget item relevant to providing for refugees will survive.

The nature of the financial regime in the Indonesian bureaucracy might also pose difficulties. Planning for the APBD starts around July for the coming budget year, so any programs associated with the role of local government under Presidential Regulation No 125 of 2016 must be planned a year in advance. Because refugee flow is hard to predict, it can be difficult to make adequate plans so far in advance. The flow can be sudden and its volume is unpredictable. Without any reliable early warning system, there is no way local government can properly plan the budget a year ahead. The mid-year revision of an ongoing APBD might help mitigate this problem but it will not totally solve it. Alternatively, the arrival of new refugees could be treated as an unforeseen event, and the specific budget category for unforeseen expenses (Belanja Tidak Terduga, BTT) covering natural disaster and emergencies could be applied, allowing flexibility to spend money when there is a refugee influx into their jurisdiction. However, using BTT funds is also problematic, because the prospect of natural disasters is real in most parts of Indonesia, and local governments would have to make difficult decisions about when to use BTT money, and how much, for handling refugees, at the risk of depleting funds set aside for natural disasters. Confronted with such decisions, any mayor or regent will probably prioritise holding funds to prepare for natural disasters.

## CONCLUSION

Asylum seekers and refugees camping in front of the Kalideres detention centre, as described earlier, might become the litmus test for the Presidential Regulation No 125 of 2016. When newly elected governor of Jakarta, Anies Baswedan, called for the support of the Ministry of Social Affairs and national immigration authorities to help handle the challenge (Komara, 2018; Carina, 2018), Minister of Law and Human Rights Yasonna Laoly reminded the Jakarta government 'of their new responsibilities under the Presidential Regulation, not least as his ministry lacked the resources to do anything' (Rizqo, 2018). Although the applied rhetoric is of 'finding a solution together', the frantic phone calls that took place within government about the Kalideres situation seem more like an attempt to pass the buck. Meanwhile, Agung Sampurno, a spokesman for the Directorate General of Immigration, reiterated that permanent resettlement in Indonesia is not an option: 'Indonesia is only a transit country, to accommodate migrants to their destination country' (Cochrane, 2018).

The confusion over responsibility can also be seen as direct outcome of an inadequate Presidential Regulation. This policy paper has highlighted some of its shortcomings with regard to lack of funding, lack of political will and lack of accommodation.

The Presidential Regulation formally complements existing laws relevant to asylum seekers in Indonesia (Law No 39 of 1999 on Human Rights and Law No 37 of 1999 on Foreign Relations) and formalises existing practices. In its present form, however, it remains too broad and must therefore be followed by more detailed guidelines on its technical implementation at the operational level, either by context or case by case, if it is to help establish best practice procedures. For example, some of the current provisions in the Presidential Regulation also lack detail, particularly on the maximum length of time asylum seekers can be detained. This is very problematic, given local governments fail to provide them with any alternative to detention.

Overall, there is widespread concern that the Regulation places many expectations on local governments that they cannot live up to; furthermore, it does not specify any sanctions for reluctant and recalcitrant local governments.

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