

RESEARCH ARTICLE

What Are Refugees Represented to Be? A Frame Analysis of the Presidential Regulation No. 125 of 2016 Concerning the Treatment of Refugees “from Abroad”

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Abstract

The Presidential Regulation No. 125 of 2016 concerning the Treatment of Refugees (PR) was a promising step to a better humanitarian response for refugees and asylum seekers arriving in Indonesia. It also provided a much-needed legal framework to validate refugees’ presence and to ground civil - society organizations’ advocacy on their behalf. However, a closer look at the PR and earlier drafts of the document shows serious compromises that: (1) reproduce the notion that refugees are only transiting in Indonesia; (2) frame refugees as passive objects, failing to recognize them as subjects with rights; and (3) prioritize security concerns that position refugees at odds with Indonesian society (*masyarakat*). Using the “What’s the Problem Represented to be” approach, this article highlights what is included and excluded from the PR and how it falls short of guaranteeing meaningful protection for refugees while living in Indonesia.

Keywords: refugees; frame analysis; Indonesia; prolonged transit; human rights

1. Introduction

This article offers a detailed frame analysis of the Presidential Regulation No. 125 of 2016 concerning the Treatment of Refugees (the “PR”). Frame analysis is generally attributable to the work of Erving Goffman¹ and offers a variety of applications in policy analysis. Frame analysis can be used to describe paradigms or perspectives,² to examine the values and goals of different protagonists in a policy debate,³ and to identify who and/or what is included and excluded from a policy.⁴ Treating policy as discourse,⁵ I will be moving away from the traditional practice of evaluating the effectiveness of a policy, and instead investigate how the PR portrays refugees and other relevant actors and frames the problem it wishes to address. The purpose here is to recognize that the way in which “problems” are framed is not “innocent,” but to make explicit the assumptions embedded in the PR that inform and affect the treatment of refugees in Indonesia.

Based on this analysis, I argue the following: (1) the PR reproduces the notion that refugees are only transiting in Indonesia; (2) it frames refugees as passive objects, failing to recognize them as subjects with rights; and (3) it is driven by concerns over security and positions refugees at odds with Indonesian society (*masyarakat*). Despite the PR being

¹ Goffman (1974).

² Rein & Schön (1993).

³ Schmidt (2014).

⁴ Gasper & Apthorpe (1996).

⁵ Bacchi (2000).

heralded by some as a mark of progress in recognizing the presence and needs of refugees, it falls short of guaranteeing meaningful protection for refugees while living in Indonesia.

To develop these arguments, I will start by offering an overview of the PR and its influence on refugee-management practices in Indonesia. I will then elaborate on my methods of analysis, which follows Bacchi's "What's the Problem Represented to be" (WPR) approach,⁶ discussed further below. Following this approach, I conduct a detailed text analysis of the signed PR along with earlier drafts that changed over time. By highlighting changes in the different drafts of the PR, we are able to see the choices made by policy-makers in keeping certain frames while discarding others. This allows me to unpack the representation of refugees in the PR, which has become a cornerstone of the treatment that refugees receive in Indonesia.

2. Overview of the PR

In Law No. 12 of 2011 on the Formation of Legislation, Article 1.6 states that: "A Presidential Regulation is a regulation enacted by the President to implement the rule of higher laws or to carry out the authority of the government."

Hadi explains that a Presidential Regulation (*Peraturan Presiden* or *regeling*) is a legal norm that applies unless it is amended or new regulations are introduced to replace it.⁷ It is legally binding and functions to elaborate on the technical implementation of higher laws in Indonesia's legal hierarchy.⁸ The two higher laws that the PR was designed to expand on are the Constitution of the Republic of Indonesia 1945, which acknowledges the right of every individual to receive political asylum (Article 28G(2))⁹ and Law No. 37 of 1999 on Foreign Relations (Chapter VI), which places the authority to grant asylum in the hands of the president in consultation with the minister of foreign affairs.

Officials and advocates I interviewed saw the PR mainly as the government's reaction to the entering of refugees into Indonesia, particularly the entry of Rohingya refugees that received national and international media attention in 2009/2010 and 2015. In May 2015, about 6,000 Rohingya refugees and Bengali migrants were stranded in the Andaman Sea without food and water, among whom 3,000 were granted temporary stay in Indonesia and Malaysia.¹⁰ This incident, which is often referred to as the Andaman Sea Crisis, brought to light a need for better emergency responses to sudden influx of asylum seekers and refugees.¹¹ The PR established guidelines for Indonesia to offer a more consolidated humanitarian response should a situation like the Andaman Sea Crisis happen again.¹²

Within the PR, the Indonesian government, through its various institutions, is the main actor that responds to the presence of foreign refugees within its territory, thus positioning itself vis-à-vis other relevant actors. The actors in the PR include refugees and asylum seekers, international actors and organizations (such as the United Nations High Commission for Refugees (UNHCR) and International Organisation for Migration (IOM)), and countries of origin and resettlement, as well as Indonesian society (*masyarakat*). The application of the PR covers both international and domestic dimensions of refugee issues and addresses the need for horizontal and vertical co-ordination between diverse governmental actors.

⁶ *Ibid.*

⁷ Hadi (2012).

⁸ See Suyatna et al. in this Special Issue, in particular Table 2, which sets out the hierarchy of law in Indonesia.

⁹ On this point, also see Dewansyah and Nafisah's article in this Special Issue.

¹⁰ McLeod et al. (2016).

¹¹ The region's response to the Andaman Sea situation of May 2015 was reviewed during the sixth Ministerial Conference of the Bali Process in March 2016. See OCHA (2016).

¹² An update of this situation is provided in the Introduction to this Special Issue; see also Tobing's article.

The PR places the treatment of refugees under the authority of the Coordinating Ministry for Political, Legal, and Security Affairs. The authority given to the Coordinating Minister for Political, Legal, and Security Affairs (referred to in Article 1.5 of the PR as “The Minister”) pertains to the inter-ministry co-ordination relevant to the treatment of refugees between the Ministry of Foreign Affairs and the Ministry of Law and Human Rights (see, among others, Articles 1.3, 1.6, 42). The minister of foreign affairs oversees co-ordination with international organizations and relevant foreign governments, while the Ministry of Law and Human Rights oversees the Directorate General for Immigration that is in charge of the Immigration Office and Immigration Detention Centres. The involvement of these two ministries offers mechanisms to cover the international and domestic consequences of hosting refugees from abroad.

The sheltering of refugees in Indonesia also highlights the role of local governments.¹³ According to the PR (see Chapter III: “Shelter”), municipal governments have the authority to determine the locations of shelters, which may be facilitated by international organizations (Articles 26.4, 26.5), and the rules and regulations locally applied in these shelters (Articles 25(h), 30.1). Therefore, regional autonomy offers an important context to the practice of hosting refugees in Indonesia. How this is realized in practice varies depending on the municipal government’s involvement and local sentiments. On the one hand, the PR recognizes the need to include local authorities in facilitating the reception of refugees. On the other hand, many provincial and municipal governments have been vocal in expressing resistance to becoming hosts for refugees.¹⁴ Limited funding, concerns over local norms, and potential tensions between foreign refugees and Indonesian locals are often expressed as reasons behind this resistance.

As explained above, this article focuses on the ways in which the government, through the PR, frames the issue of refugees. Borrowing from Yanow, I position the PR as a “policy artefact” through which the government, as one “interpretive community,” seeks to share a common understanding of policy ideas and language.¹⁵ This is exemplified by the definition of “refugee” in the PR that is in large part consistent with the 1951 Convention on the Status of Refugees (1951 Refugee Convention). The recognition of a “refugee” as a legal category as acknowledged and defined in the PR offers a common framework that the UNHCR and other civil-society organizations are able to use to advocate for refugees in the country.

The term “refugee” is translated into the Indonesian language as “*pengungsi*.” The lexical meaning of the word *pengungsi* can refer to both internally displaced persons (IDPs) and groups of people who were forced to migrate due to circumstances in their countries of origin.¹⁶ This is why, in its title, the PR specifically refers to the treatment of refugees from abroad. The definition of refugees (*pengungsi*) in Article 1.1 of the PR is:

A refugee from abroad, hereinafter referred to as a refugee, is a foreigner who resides within the territory of the Republic of Indonesia due to a well-founded fear of persecution for reasons of race, ethnicity, religion, nationality, membership of a particular social group, and different political opinions, and does not wish to avail him/herself of protection from his/her country of origin and/or has obtained asylum seeker status or refugee status from the United Nations through the United Nations High Commission for Refugees in Indonesia.

¹³ For more information on the role of local governments see Suyatna et al. and Missbach & Adiputera in this Special Issue.

¹⁴ Missbach et al. (2018b), p. 16.

¹⁵ Yanow (2000), p. 2.

¹⁶ Soeprapto (2004), p. 57. Also see Kamus Besar Bahasa Indonesia (2019) (Online Indonesian Dictionary). The word “*pengungsi*” (noun) originates from the verb “*ungsi*” (flee) that means (translated from dictionary) “to leave to avoid danger or to save one’s self (by moving to a secure location).” The prefix “*peng*” in “*pengungsi*” means “a person/people who flee (*ungsi*).”

While the definition of a refugee is largely consistent with the 1951 Refugee Convention, there are slight variations, one of which is the explicit reference to include “and/or has obtained asylum seeker status or refugee status from the United Nations” to define a “refugee.” This implies, consistently with the “declaratory” concept of “refugee,”¹⁷ that, under the PR, refugees and asylum seekers are not separate categories. Based on this definition, a person who requests and receives asylum status from the UNHCR is recognized by the PR as a refugee.

Moreover, the conjunction “and/or” in the definition can also be interpreted to mean that, according to the PR, an individual is recognized as a refugee because they meet the definition and not necessarily because they received asylum-seeker or refugee status from the UNHCR. It remains unclear what led to this conjunction in the PR. One hypothesis could be that it was added to the pre-existing definition from the 1951 Refugee Convention in order to emphasize the central role that the UNHCR plays in determining refugees’ status in Indonesia.¹⁸ This shift in legal conceptualization in the PR is reflected in the current UNHCR practice in Indonesia with a softening/merging of the distinction between asylum seekers and refugees. According to an UNHCR employee who asked not to be named, following the introduction of this definition in the PR, the UNHCR has shifted from the previous practice of only giving refugee-identification cards to asylum seekers who had completed the Refugee Status Determination (RSD) process to providing refugee-identification cards to *all* asylum seekers who register in Indonesia.¹⁹ This practice was confirmed in my interview with an official at the Directorate General for Immigration and Immigration Detention Centres.²⁰ The RSD process, therefore, is no longer a prerequisite to receiving refugee-identification cards while living in Indonesia. Instead, refugees undergo the RSD process as part of the screening to be resettled in a third country.

In this sense, the PR provides space for the UNHCR and civil-society organizations to validate the presence of refugees and asylum seekers, and to strengthen their advocacy work in Indonesia. Many indeed heralded the PR as a progressive step in Indonesia’s role as a host country for refugees.²¹ However, as I will demonstrate through the analysis of different drafts of the PR, this common framework was produced through a series of compromises that continues to leave refugees poorly protected during their stay in Indonesia. Rather than being a progressive step, the PR further solidifies Indonesia’s reluctant commitment to hosting refugees.

3. Methods of analysis

Gasper and Apthorpe wrote: “Crucial in all policy practice is framing, specifically what and who is actually included, and what and who is ignored and excluded.”²² Framing is a powerful tool in policy discourse, as it can reveal the processes by which people, specifically policy-makers, construct interpretations of the problems they wish to address.²³

¹⁷ According to the declaratory theory of “refugee,” a person is a “refugee” prior to the time at which their refugee status is formally determined. As the UNHCR Handbook explains: “Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognised because he is a refugee”: see UNHCR Handbook (1979), para. 28.

¹⁸ For more information on the role of the UNHCR, see the Introduction to this Special Issue.

¹⁹ Anonymous (UNHCR employee) in recorded interview with the author at the UNHCR Office, Jakarta, 10 June 2019.

²⁰ Anonymous (Official at the Directorate General for Immigration and Immigration Detention Centre) in recorded interview with the author at the office of the Directorate General for Immigration, Jakarta, 9 August 2018.

²¹ Tobing (2017).

²² Gasper & Apthorpe, *supra* note 4, p. 6.

²³ Rein & Schön, *supra* note 2, p. 147.

To examine the framing of the PR, I turn to Bacchi's WPR approach. Bacchi wrote: "The task in a 'WPR' analysis is to read policies with an eye to discerning how the 'problem' is represented within them and to subject this problem representation to critical scrutiny."²⁴

To do this, she suggests the following questions to guide the analysis of a policy:

1. What's the "problem" represented to be in a specific policy or policy proposal?
2. What presuppositions or assumptions underpin this representation of the "problem"?
3. How has this representation of the "problem" come about?
4. What is left unproblematic or silenced in this problem's representation?
5. What effects are produced by this representation of the "problem"?
6. How/where has this representation of the "problem" been produced, disseminated and defended and how has it been (or could be) questioned, disrupted and replaced?²⁵

To answer these questions, I used Atlas.ti software and Scriven's seven steps of argumentation analysis²⁶ in deconstructing and analyzing the text of the PR. This allowed me to note the PR's general structure, the different institutions involved in its implementation, the use of certain verbs that are linked to these institutions, and actors and actions that were included and excluded from the policy document.

During this process of analysis, it was important for me to reflect on the nuances in the language and translation of the text. Since the official text of the PR is only available in Indonesian, I have translated the PR in its entirety. My initial analysis was completed in a mix of Indonesian and English, often thinking first in Indonesian to understand meaning and choice of specific words, and then shifting to English when developing codes and writing notes. Fluent in both Indonesian and English, I have tried to be sensitive to the nuances in both languages. Any segments of the PRs included in this article are English translations, which are my own.²⁷

In deconstructing the ways in which the PR represents refugees, I also take into consideration how others give meaning to the text through their interpretations and reactions. This is because the interpretation of a policy text and framing of a policy issue must be done in relation to other existing texts and contexts.²⁸ Therefore, to enrich my analysis, I have engaged with data that I gathered during my fieldwork in Indonesia from 2018–19. These data include: (1) formal and informal interviews with government and non-government actors, regarding the treatment of refugees in Indonesia; (2) multi-sited ethnographic observations and qualitative interviews in Kalideres, West Jakarta (April–July 2018), Cisarua, West Java (August–October 2018 and February–April 2019), and Medan and Riau Islands (June–July 2019); (c) observations during workshops, discussions, and seminars in Jakarta related to the issue of refugees in Indonesia²⁹; and

²⁴ Bacchi (2012), p. 21.

²⁵ *Ibid.*

²⁶ Scriven (1976), pp. 39–45, offers seven steps to argumentation analysis. For a comprehensive and structured analysis, I also followed Gasper (2000), who recommends structuring the policy text into a table of five columns inspired by Scriven's steps that include: deconstruction of meanings, conclusions and assumptions, critiques towards the assumptions, and proposed counterarguments, other arguments, or more neutral ways of expressing the arguments.

²⁷ For quality control, I have also consulted an unofficial translation of the PR, available at <https://www.refworld.org/docid/58aeee374.html> (accessed 25 November 2020).

²⁸ Widdowson (2004), p. 36; Rein & Schön, *supra* note 2, pp. 154–5.

²⁹ Taking into account ethical considerations in my research when presenting observations during workshops, discussions, and seminars, I do not specify the name nor institutions of individuals whose opinions and views I documented.

(d) earlier drafts and other documents that informed the PR that I collected from different sources.

Based on the methods of analysis above, in the following section, I highlight three ways in which the refugee “problem” is represented in the PR. In elaborating each representation of refugees, I will engage with segments of the PR text and discuss how these segments can be understood and are given meaning within the context of Indonesia. Approaching policy as discourse allows analysts to make explicit the ways by which the government shapes the issue of refugees in Indonesia.

4. What are refugees represented to be?

4.1 Refugees framed as migrants, specifically transiting migrants

As explained in the second section of this article, the PR marks a progressive shift in recognizing the definition and legal status of asylum seekers and refugees in Indonesia. However, in practice, there are still ambiguities regarding refugees’ social and legal statuses. During my fieldwork, I also observed ambiguities in the ways in which people referred to asylum seekers, refugees, and migrants. In some cases, people I interviewed used the word *migran* (migrant) instead of *pencari suaka* (asylum seeker) or *pengungsi* (refugee). When I asked why, some explained that it was to emphasize the fact that refugees came from abroad and were distinct from Indonesian *pengungsi* (IDP); meanwhile, one volunteer said it was because the term “migrant” includes both asylum-seeker and refugee categories,³⁰ while most people simply said that they were not aware of the difference.

One official from the Immigration Detention Centre (IDC) in Tanjung Pinang³¹ explained that his preference to use the term “migrant” was due to the fact that the term “refugee” is not recognized in Law No. 6 of 2011 on Immigration, which only recognizes documented and undocumented foreigners.³² Several officials from IDCs and the Immigration Office that I interviewed believed that the PR’s recognition of refugees and asylum seekers is inconsistent with Law No. 6 of 2011 on Immigration. According to their interpretation, by virtue of being foreigners, refugees and asylum seekers should be regulated under Law No. 6 of 2011 on Immigration, and not the PR, which is only a Presidential Regulation and thus lower than a higher “Law” in the legal hierarchy.³³

This view was refuted by Febi Yonesta (Jakarta, 25 February 2019) from SUAKA, an Indonesian civil-society network of lawyers for refugee protection, who stated:

Immigration Law regulates immigrants as legal subjects. Therefore, the question is: are asylum seekers and refugees migrants? We [SUAKA] always say, “no.” They are not subjects of Immigration Law. They are subjects of the Foreign Relations Law, the law on which the Presidential Regulation is based.³⁴

³⁰ Indonesian volunteer for international organization facilitating refugees in an unrecorded discussion with the author in Makassar, 22 April 2019.

³¹ Anonymous (Official of Immigration Detention Centre Tanjung Pinang) in an unrecorded discussion with the author at IDC, Tanjung Pinang, 15 July 2019.

³² See Law No. 6 (2011) on Immigration, Chapter III: “Entering and Exiting Indonesian Territories.” It is worth noting that Law No. 6 (2011) offers special treatment to victims of human smuggling (Art. 88). However, immigration officers will be appointed to assure their return to their countries of origin (Art. 89). See discussion in the Introduction to this Special Issue.

³³ See Table 2 in Suyatna et al.’s article in this Special Issue.

³⁴ Yonesta, Febi (Chair of SUAKA) in discussion with the author at SUAKA office, Jakarta, 25 February 2019.

The debate on whether refugees are subjects of the Law No. 6 of 2011 on Immigration or the Law No. 37 of 1999 on Foreign Relations was the subject of a court case in 2018, when two Afghanistan refugees were prosecuted under the Law No. 6 of 2011 on Immigration and found guilty of entering Indonesia without legal travel documents, despite declaring that they were seeking asylum and obtaining refugee status from the UNHCR.³⁵ This decision concerning the Qasemi couple is discussed in the Introduction.

The practice of framing refugees as migrants who are regulated under Law No. 6 of 2011 on Immigration is further complicated by the (perceived and/or actual) temporary nature of refugees in “transit” in Indonesia. The PR is structured around the stages of the process through which refugees are received and handled in Indonesia: from when refugees are received (Chapter II: “Detection/Discovery (*Penemuan*)”), sheltered (Chapter III: “Shelter (*Penampungan*)”), “secured” or monitored (Chapter IV: “Securing/Safeguarding (*Pengamanan*)”), until they leave Indonesia (Chapter V: “Immigration Supervision (*Pengawasan Immigration*)”). Articles 37, 38, and 39 of the PR regulate three pathways for refugees to exit Indonesia: voluntary repatriation, deportation for those whose request for refugee status is declined, and resettlement in a destination country. The option to integrate locally into Indonesia is not mentioned in the PR and is therefore not conceived of as a possibility.

By contrast, when analyzing earlier drafts of the PR, I came across attempts to include the option of local integration as a possible permanent solution for refugees. In a draft of *Peraturan Tetap (Protap) Penanganan Pencari Suaka dan Pengungsi di Wilayah Indonesia* (Standard Operating Procedure (SOP) for the Treatment of Asylum Seekers and Refugees in Indonesian Territory) dated 8 November 2011,³⁶ local integration was mentioned in Article 8: “Permanent Solution (durable solution),” which stated³⁷:

- a) Permanent solution consists of: voluntary repatriation, resettlement and local integration³⁸;
- b) The Republic of Indonesia government facilitates repatriation and resettlement if needed (consistent with point (a) above and recommended by the 1951 Refugee Convention);
- c) Local integration for refugees is realized according to the Laws Concerning Citizenship;
- d) Indonesia gives precedence to voluntary repatriation as a permanent solution.

Similar references to local integration as one of three possible permanent solutions can also be found in five other drafts leading up to the enactment of the PR.³⁹ However, by

³⁵ Court cases No. 1/Pid.S/2018/P.N. Tng; No. 02/Pid.S/2018/P.N. Tng (Tinggi Tangerang).

³⁶ A *Protap* or Standard Operating Procedure (SOP) is a written instruction that breaks down what needs to be done (when, where, by whom) that is formulated to avoid inconsistent practices among state employees that may disrupt overall organization performance (Permenpan No. PER/21/M-PAN/11/2008).

³⁷ My translation.

³⁸ The three options of voluntary repatriation, resettlement, and local integration are consistent with the UNHCR’s Framework for Durable Solutions for Refugees and Persons of Concern. The UNHCR’s approach to durable solutions has since evolved in response to the challenges that refugees and asylum seekers face to include “comprehensive solutions”: see UNHCR (2017). Local integration equates to “asylum” in UNHCR policy.

³⁹ Earlier drafts of the SOP for the Treatment of Asylum Seekers and Refugees in Indonesian Territory dated 7 December 2011 (Section III No. 8) and 17 September 2013 (point H) repeated the points in the earlier draft (8 November 2011, Art. 8, see above). Meanwhile, *Rancangan Peraturan Presiden* (Draft of Presidential Regulation) dated 13 April 2013 (Art. 1.14), September 2013 (Art. 1.15), and 2014 (Art. 1.15) wrote “*Durable Solutions* are permanent solutions that consist of *voluntary repatriation, resettlement, and local integration*. Indonesia gives precedence to *voluntary repatriation* as a permanent solution” (emphasis in original).

2015, local integration ceased to be mentioned at all. In a draft of the PR dated 20 April 2015, Articles 1.12 and 1.13 specifically define voluntary repatriation and resettlement as the only two options for refugees.

There are a number of possible contributing factors behind the removal of local integration as a possible durable solution for refugees in Indonesia. First, it could be argued that Law No. 12 of 2006 on Citizenship does not offer any pathways for refugees to become citizens,⁴⁰ which means that earlier drafts of the PR might have been unworkable. Another possible explanation is that, historically, Indonesia's engagement with foreign refugees has been limited to being a temporary host for the processing of refugees' resettlement to third countries. In the late 1970s, faced with the influx of refugees from Vietnam, Indonesia upheld the principle of *non-refoulement* and established Galang Island as a temporary refugee-processing centre during the period of the Comprehensive Plan of Action,⁴¹ but left the facilitation, management, and resettlement of refugees to Western states via the UNHCR.⁴² In doing so, Indonesia has consistently distanced itself from direct responsibility for the processing of refugee claims or associated resettlement.

Indonesia's experience in dealing with Vietnamese refugees in the 1970s still colours the treatment that refugees receive today. When I raised the question of local integration for refugees in Indonesia during the workshop on the PR at the University of Indonesia in March 2019, the keynote speaker and former minister of foreign affairs, Nur Hassan Wirajuda, responded: "Indonesia has adopted an already rigid position about asylum seekers. We can see this in the case of the Vietnam refugees. None of them could be settled in Indonesia because we are not a party to the 1951 Convention."

During my fieldwork, similar views were consistently reiterated by interview respondents, from government officials to volunteers leading grassroots initiatives. While opinions may differ with regard to whether Indonesia should host refugees and what assistance refugees are entitled to while living in Indonesia, there is a general reluctance to allow refugees to permanently integrate.⁴³

The framing of refugees in the PR is thus problematic, as it reproduces the discourse of Indonesia as a transit country whereby refugees are only temporary residents. The phrase "transitory migrants" assumes that migrants have clearly defined intentions and routes, and expects migrants to stay for relatively short periods at in-between locations before they move on to their final destinations.⁴⁴ These assumptions do not always fit migrants' dynamic and often erratic realities, which are unpredictable, time-dependent, and context-specific.⁴⁵ Transit presumes eventual settlement elsewhere. Meanwhile, resettlement opportunities in third-party countries for refugees are declining,⁴⁶ meaning that their "transit" in Indonesia could potentially continue indefinitely. By identifying refugees in Indonesia as transitory, the focus is on refugees' presumed intention and the assumed

⁴⁰ This conclusion is based on the fact that no article in the Indonesian Citizenship Law mentions refugees or asylum seekers.

⁴¹ Kneebone (2017), p. 30. See discussion in the Introduction to this Special Issue.

⁴² Tan (2016), p. 389.

⁴³ I observed a general reluctance to allow refugees to integrate locally in Indonesia while on fieldwork in 2018–19. During this period, there were also several pieces of news coverage that captured negative reactions by Indonesian locals towards refugees. E.g. Andayani (2019); Violetta (2019); Wijaya (2019). Missbach, Adiputera, & Prabandari (2018a) also highlighted the shifting of attitudes towards foreign refugees in Makassar, where an originally warm welcome soured over time. See also Missbach and Adiputera in this Special Issue.

⁴⁴ Sampson, Gifford, & Taylor (2016), p. 1137.

⁴⁵ Missbach (2015), pp. 15–8; Crawley & Skleparis (2017).

⁴⁶ UNHCR (2019). The UNHCR Global Trends: Force Displacement in 2019 Report estimates that about 80 million people are forcibly displaced due to rising cases of conflict, persecution, and human rights violations, which is accompanied by declining opportunities for resettlement. As such, 85% of displaced people in the world are living in developing countries with limited resources to support them.

ability to move on, while ignoring the fact that the options to return, stay, or legally settle elsewhere are often not available.

4.2 Refugees framed as passive objects, not subjects with rights

The PR uses several terms to refer to refugees. It uses the term “foreigner”/“foreign citizen” (mentioned seven times) when referring to people whose refugee status has not yet been granted or, in Article 30.2, when referring to refugees who have violated rules and regulations. The term “victim” is used 25 times to refer to refugees who have passed away, such as when referring to “*jenazah*” (corpse/dead body). A refugee (*pengungsi*) is also referred to as an “asylum seeker” (*pencari suaka*) eight times. In some instances, such as in Article 1, the labels “refugee” (*pengungsi*) and “asylum seeker” (*pencari suaka*) are used to describe distinct but related legal statuses. Asylum-seeker status is held by a person if they are claiming to be a refugee (they receive temporary protection while their application is being processed) and gain refugee status if their RSD application is successful. However, in other instances (i.e. if their application for refugee status is rejected and any avenues for appeal have been exhausted), an unsuccessful application is again referred to as an asylum seeker (*pencari suaka*). In the latter context, although an unsuccessful applicant is referred to as an “asylum seeker,” their legal status is distinct from a pre-RSD “asylum seeker.” Specifically, an unsuccessful applicant may be the subject of deportation. Finally, a refugee is referred to as a “detainee” (one time) in reference to those who undergo voluntary repatriation to be deported without sufficient travel documents.

In the PR, refugees are not attributed much agency. The only active verbs associated with refugees are “to call for help” (when found at sea),⁴⁷ “declare self as a refugee,”⁴⁸ “obey,”⁴⁹ and “self-report.”⁵⁰ Their agency relies on their vulnerability, their claims for help, and their obedience in following the system. All other references to refugees in the PR position them as objects that other actors act upon unless they are choosing to voluntarily return to their country of origin.

While the lack of acknowledgement of human agency is perhaps not uncommon in legislative discourse, the framing of refugees as passive objects is made stronger through the absence of any explicit reference to the human rights of refugees in the PR. In Chapter III: “Shelter (*Penampungan*)”, the PR sets the standards that must be met by regency/municipal governments when deciding on a shelter’s location. According to Article 26.2, refugee shelters must be in close proximity to medical and worship facilities, located in the same city as an IDC, and set in adequately secure locations. Even though the PR assigns the authority to determine the locations of shelters to regency/municipal governments, it does not impose any obligation on local authorities to set up or provide these shelters.

Instead, the facilitation of shelters and basic necessities for refugees *may* be provided by international organizations working in the field of migration through the Ministry of Law and Human Rights (Articles 26.3, 26.4, 26.5). When passing the responsibility of facilitating refugees’ shelters and basic needs to international organizations, Article 26.3 uses the Indonesian auxiliary verb “*dapat*” (may) instead of, for example, “*harus*” (must). The use of the word “*dapat*” in legislation is very intentional, as it puts into writing what *may* be done without the burden of guaranteeing that it must be done. The word “*dapat*” is also used in Article 26.6:

⁴⁷ Art. 6.

⁴⁸ Arts 13(3), 20 (2).

⁴⁹ Art. 32.

⁵⁰ Art. 36.

In the event that medical and worship facilities as referred to in Paragraph (5) letters c and d are not available, the local regency/municipal government may (*dapat*) seek to provide these facilities outside the shelter by taking into account their accessibility.

Chapter III in the PR allows the Indonesian government to continue the practice of relying on international organizations, specifically the IOM, to facilitate refugee shelters and falls short of ensuring that refugees living in Indonesia have access to basic rights such as education, health facilities, and livelihood. While the involvement of international organizations ensures that certain standards are met when selecting shelters for refugees, over a third of refugees in Indonesia are not registered as beneficiaries of the IOM.⁵¹ Therefore, thousands of refugees, who are commonly referred to as “independent refugees” or “unsupported refugees,” must finance their own living costs outside of shelters in an environment in which they may face punishment if they are found to be working.

The absence of human rights discourse in the PR sits in contrast to earlier drafts. In two of the earliest drafts on *Protap* (SOP), dated 8 November 2011 and 7 December 2011, there were references to higher laws that emphasize the protection of human rights, such as:

1. Law No. 39 of 1999 on Human Rights;
2. Law No. 23 of 2002 on Child Protection, Articles 59–61;
3. Universal Declaration of Human Rights, Article 14;
4. The 1951 Refugee Convention;
5. The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Article 3;
6. The Convention on the Rights of the Child, Article 22; and
7. Fourth Geneva Convention on the Protection of Civilian Persons in Time of War, Article 44 and Additional Protocol I 1977.

However, references to most of these laws were not included in later versions. Among these laws, only the Law 39 of 1999 on Human Rights was included in the PR draft dated September 2013. Meanwhile, as mentioned earlier, the preamble of the PR only mentions two higher laws: the 1945 Constitution and Law No. 37 of 1999 on Foreign Relations. Article 26 of Law No. 37 of 1999 guarantees the right to seek asylum to people from abroad in accordance to international customary law, although neither of these laws specifies what rights refugees have while living in Indonesia.

The PR excludes any mention of “human rights” in its text. Instead, it consists of technical and administrative instructions in response to the presence of refugees in Indonesia. Enny Soeprapto (Jakarta, 18 April 2018), former Commissioner for Indonesia’s National Human Rights Commission (Komnas HAM), stated during an interview with me: “The Regulation does not touch the root of the problem. It is procedural, it is already obsolete.”⁵²

The PR lacks any guiding principles with regard to refugees’ rights, despite the fact that such principles can be found in earlier drafts. *Protap* (SOP) draft, dated 8 November 2011, included in Paragraph 2: “Principles (*Prinsip*)” the following points:

1. *Non-refoulement*: Indonesia will not deport asylum seekers to locations where their lives and freedoms could be threatened. Deportation will only be done to those who underwent the *refugee status determination* process and did not fulfil the criteria

⁵¹ Directorate General of Immigration (2018).

⁵² Enny Soeprapto (National Commission for Human Rights) in recorded interview with the author at Ratu Plaza, Jakarta, 18 April 2018.

- to receive international protection as refugees, and therefore are considered undocumented immigrants, to be treated in accordance to national regulations on immigration (and in line with Article 33 (1) of the 1951 Refugee Convention);
2. Indonesia will not prosecute/conduct immigration action towards asylum seekers/ refugees for unofficially entering or exiting Indonesian territory (in accordance to Article 31(1) of the 1951 Refugee Convention and Law No. 6 of 2011 on Immigration, Article 86); and
 3. Non-discrimination: Indonesia will provide the same treatment to all asylum seekers/ refugees, without discrimination based on race, religion, or nationality/ country of origin.

A later version of this *Protap* (SOP) draft, dated 7 December 2011, added to this list of principles:

1. Respect towards asylum seekers and refugees' rights; and
2. Treatment of asylum seekers and refugees will not be less [or "not lower," which would be the literal translation of "*tidak lebih rendah*"] than other foreign residents.

As a product of these principles, both *Protap* (SOP) drafts included suggestions from the Legal Aid Institution Indonesia (*Lembaga Bantuan Hukum* (LBH) Indonesia)⁵³ to guarantee the right to access education for underage asylum seekers and refugees (see Paragraph 7: "Waiting Period (*Masa Tunggu*)"). *Protap* (SOP) draft, dated 7 December 2011, went even further and added, in square brackets, refugees' rights to receive an adequate income as long as it does not violate existing laws and regulations. These drafts included in their notes that these suggestions came from LBH Indonesia and the HRWG (Human Rights Working Group),⁵⁴ indicating that representatives of civil-society organizations were consulted in formulating earlier drafts.

The same principles included above can still be traced in the PR draft dated 3 April 2013, Article 14, which states that: "Treatment towards asylum seekers and refugees is based on principles of international law that are universally applied and relevant national laws of the Republic of Indonesia."

Article 12 of this draft also included a provision on care (*perawatan*) that constitutes livelihood support and medical assistance, guarantees the right of asylum seekers and refugee children to access education, and accommodates civil-society organizations that provide or facilitate access to education. Later drafts continued to include the same guiding principles and rights, although the rights of asylum-seeker and refugee children to access education was no longer included in the PR draft dated 20 April 2015.

None of these aforementioned principles relating to the protection of asylum-seeker and refugee rights was retained in the final version of the PR, suggesting that recommendations from civil-society organizations were not heeded. Febi Yonesta from SUAKA explained, during an interview in Jakarta on 23 May 2018, that several civil-society organizations, including SUAKA, were involved in initial meetings discussing the PR on the treatment of refugees.⁵⁵ He then recalls that the Directorate General for Immigration influenced the final version of the PR rendering it devoid of any guiding principles and only offering technical instructions for government institutions and international organizations.

⁵³ The Legal Aid Institute Indonesia (*Lembaga Bantuan Hukum* (LBH) Indonesia) offers pro bono legal aid for marginalized people. LBH has also been approached by refugees for legal assistance, specifically those whose asylum cases were rejected or those who need support when dealing with the law in Indonesia.

⁵⁴ See HRWG (2017).

⁵⁵ Yonesta, Febi (Chair of SUAKA) in recorded interview with the author at SUAKA office, Jakarta, 23 May 2018.

However, I could not confirm this account during interviews with officials from the Directorate General for Immigration.

Paying attention to what governments include and exclude in a political agenda sheds light on the ways in which the terms of a discourse limit what can be discussed as possible or desirable, or impossible or undesirable.⁵⁶ Therefore, the absence of refugee rights in the PR text speaks volumes, as it exempts the government from the responsibility to protect refugees' rights while they are living in Indonesia through omission of civil-society organizations' suggestions found in earlier drafts of the regulation. The exclusion of human rights discourse from the PR is even more problematic considering its framing of refugees as potential threats to security, which will be discussed below.

4.2 Refugees framed as a potential security threat

In the PR, the word *aman* (safe/secure) and its varieties, *pengamanan* (security measures), *keamanan* (security), and *mengamankan* (securing/safeguarding), are mentioned nine times in Chapter IV, which is entitled “*Pengamanan*.” Chapter IV, Article 31 of the PR states (emphasis added):

- (1) The process of *securing* refugees upon detection is carried out by the National Police of the Republic of Indonesia.
- (2) Government agencies and local communities (*masyarakat setempat*) that find refugees shall undertake necessary security measures and coordinate with or report to the National Police of the Republic of Indonesia.
- (3) Government institutions as referred to in paragraph (2) are obligated to *create secure conditions in order to avoid criminal actions*.

The word “*pengamanan*” in the Indonesian context can be ambiguous. Carrying out security measures (*pengamanan*) towards refugees could either mean safeguarding refugees from potential threats towards them or securing refugees before or when they become a threat towards others. The language in the quoted text above suggests the latter. It emphasizes a need for security measures when dealing with refugees—one that obliges the government to undertake pre-emptive steps to avoid criminal actions—thus acting based on the assumption that a crime *might* occur, rather than to act when one *has* occurred.

This interpretation of “*pengamanan*” in the PR is supported by earlier drafts of the PR. In a draft from 2014, Article 5.1 defined *pengamanan* (security measures) as “every effort, work, and activity done with the purpose of preventing, deterring, eradicating and upholding the law towards every threat and disorder.” Based on this definition, the securing of foreign asylum seekers and refugees in the draft Article 5.1 is driven by the assumption that refugees are a potential source of threat and disorder. While this definition is not explicitly included in later drafts, it is not farfetched to assume that this definition continued to inform the words used by policy-makers in later drafts, including the PR.

The positioning of refugees in the PR as objects that need to be secured (which justifies the need to take action in the name of security) is a frame commonly examined within critical security studies as the securitization approach.⁵⁷ The securitization of refugees and other migrants is more broadly a well-known tool of government utilized by different institutions to manipulate unease felt by some citizens towards the foreign “other,” or to foster it if it does not yet exist.⁵⁸

⁵⁶ Bacchi, *supra* note 5, pp. 48–9.

⁵⁷ Bilgic, Dhami, & Onkal (2018), p. 253.

⁵⁸ Bigo (2002), p. 65.

According to Febi Yonesta (Jakarta, 29 February 2019) from SUAKA, the fact that the PR places the authority to co-ordinate the handling of refugees with the Coordinating Ministry for Political, Legal, and Security Affairs is significant:

When a regulation gives [a] mandate to a specific ministry, it comes with nuances . . . Representatives of the Coordinating Ministry for Political, Legal, and Security Affairs have a mindset that emphasises security. That's why from the beginning we have said it [the PR] is heavy on a security approach.⁵⁹

In the context of Indonesia, the securitization of refugees is accomplished by associating them with criminal activities, by instilling moral panic, and by creating fear of competition between Indonesians and refugees, particularly in relation to employment.

By employing the language of security,⁶⁰ the PR can potentially be used to further stimulate a sense of hostility towards refugees. In a personal blogpost,⁶¹ Muhammad Alvi Syahrin, an Immigration Officer and Head of Research and Community Service Centre at Polytechnic of Immigration, wrote in his analysis of earlier drafts of the PR:

Not all asylum seekers and refugees are victims of political persecution or war in their countries of origin. Many of them have ulterior motives, such as drug trafficking, terrorism, human smuggling and other motives that negatively impact Indonesia. However, through this draft of the Presidential Regulation, asylum seekers and refugees will easily enter Indonesia without having to be categorised as illegal immigrants.

Not only does Syahrin frame many refugees as engaged in criminal activities, but his critique of the PR draft suggests that, in his opinion, refugees and asylum seekers' mere entrance into Indonesia should be categorized as illegal.

Furthermore, Article 30.1 of the PR states: "Every refugee shall comply with the rules of conduct at the shelters as referred to in Article 25 (h), *the customs prevailing in the local community*, and relevant laws and regulations" (emphasis added). Religion and customs, however vague and abstract, are perceived as essential to the stability of Indonesian society and the presence of a foreigner, the "other," is therefore deemed as a potential threat. Within this frame, a "good refugee" is expected to exist without causing any challenge to prevailing customs in society.

During my interviews with officials at the Directorate General for Immigration and IDCs, I encountered accounts of the criminalization of refugees for obtaining employment and for behaviour that was deemed immoral. In Tanjung Pinang, for example, I was told that a male refugee was placed in solitary confinement at the IDC for "immoral behaviour" (*tindakan asusila*) with a married woman, while another refugee had been transferred to a shelter in another city by the IDC for similar reasons. A selection of cases in which some individual refugees have broken national laws or local norms is often used to discredit entire groups of refugees—whilst ignoring the challenges and circumstances that some refugees face that explain why individual refugees have made these personal decisions.

⁵⁹ Yonesta, Febi (Chair of SUAKA) in discussion with the author, 29 February 2019.

⁶⁰ Huysmans (2011), p. 372.

⁶¹ Syahrin (2014). This personal blog post entitled "*Analisa Yuridis Rancangan Peraturan Presiden Tentang Orang Asing Pencari Suaka Dan Pengungsi (Perspektif Hukum Keimigrasian Indonesia—UU No. 6 Tahun 2011 Tentang Keimigrasian)*" [Juridical Analysis of Presidential Regulation Draft Concerning Foreign Asylum Seekers and Refugees (Legal Perspective of Indonesian Immigration—Law No. 6 (2011) on Immigration)] includes the official logo of the General Directorate of Immigration. It is possible that this post only represents the individual views of the writer. However, Syahrin presents himself as an immigration officer on this personal blog, so it is likely that these views are commonly shared within his institution.

By doing so, refugees' complex realities are reduced to simplified binaries of good and bad, deserving and non-deserving, thus further alienating the host society from the refugee "other."⁶²

The word "society" (*masyarakat*) is mentioned only three times in the PR and is always linked to the act of reporting encounters with refugees to police for security reasons. The attribution of this role to *masyarakat* can be interpreted as an extension of community members' expected participation in surveillance of state-society "border control" that has been spurred by public-information campaigns funded by Australia since 2010.⁶³ Such public-information campaigns are conducted to train state authorities and civilians in some coastal communities on people smuggling and on detecting and reporting "suspicious foreigners."⁶⁴ The PR positions *masyarakat* (society) as actors whose role is limited to reporting refugees to authorities when found on land or at sea.

While the PR acknowledges the role that international organizations may play in facilitating the sheltering of refugees, it makes no mention of Indonesian civil-society organizations (*organisasi masyarakat sipil*). The omission is striking considering that earlier drafts of the PR mentioned the role of civil-society organizations.⁶⁵ During my fieldwork, refugees and staff members of civil-society organizations I interviewed would often comment on the increasing number of organizations and initiatives set up to support refugees living in the capital city of Jakarta and surrounding areas. These initiatives included providing temporary shelters, distribution of food, and learning centres for unsupported refugees. The supportive role played by some civil-society organizations does not fit with the limited framing of Indonesian society or local community involvement with refugees in the PR, which is to report their presence as potential security threats.⁶⁶

During the workshop on the PR at the University of Indonesia (March 2019), a representative of a government institution overseeing immigration framed responses to refugees in Indonesia as falling into two factions: those who saw refugees as a security issue and those who saw refugees as a humanitarian issue.⁶⁷ He then attributed the humanitarian perspective to advocates and activists, while government officials' responsibility was limited in this frame to the role of ensuring security. The final draft of the PR could be read as consistent with such a frame, as it reflects only a securitized framing to the exclusion of the humanitarian frame, as discussed earlier.

5. Conclusion

This article offers a frame analysis of the PR. Adapting Bacchi's WPR approach, which critically analyses the way in which a problem is represented, I have made explicit the PR's core assumptions. Through this analysis, I identified three primary ways in which refugees are being positioned in the PR. First, refugees are framed as transiting migrants who are not given the option of integrating locally in Indonesia. Second, refugees are framed for the most part as passive actors who are not entitled to basic rights while living in Indonesia.⁶⁸ Third, refugees are framed as a potential security threat and their presence is framed as potentially incompatible with local communities and their norms. By engaging other sources of data, such as earlier drafts of the PR, interviews, and observations during fieldwork, I was able to reflect on how the legal text has been given a sociopolitical

⁶² See Damaledo's article in this Special Issue; see also Zetter (1991), pp. 49–50.

⁶³ Kneebone, *supra* note 41, p. 34.

⁶⁴ Missbach (2014), p. 234.

⁶⁵ See Paragraph 7: "Waiting Period (*Masa Tunggu*)" in Protap (SOP) draft dated 7 December 2011.

⁶⁶ Arts 18(2), 31(2).

⁶⁷ See also on this point the Introduction to this Special Issue.

⁶⁸ Yonesta (2019).

meaning in the context of Indonesia. Analyzing the content of earlier drafts also demonstrated what policy-makers chose to include and to exclude in the final draft of the PR, which directly affects the experience of refugees' lives in Indonesia. Opportunities for refugees to resettle to third countries are declining and funding for international organizations that play a central role in facilitating shelters for refugees in Indonesia is limited. Against this background, the Indonesian government's framing of refugees in the PR exists in contrast to the sociopolitical realities of many refugees living in Indonesia and further contributes to the refugees' insecurity and alienation from Indonesian society.

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